

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-3904, 2.2-3905, and 2.2-3907 of the Code of Virginia, relating to*
 3 *Virginia Human Rights Act; nondiscrimination; procedures for a charge of unlawful discrimination.*

4 [S 637]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 2.2-3904, 2.2-3905, and 2.2-3907 of the Code of Virginia are amended and reenacted as**
8 **follows:**9 **§ 2.2-3904. Nondiscrimination in places of public accommodation; definitions.**

10 A. As used in this section:

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

12 "Place of public accommodation" means all places or businesses offering or holding out to the general
13 public goods, services, privileges, facilities, advantages, or accommodations, *including educational*
14 *institutions.*15 B. It is an unlawful discriminatory practice for any person, including the owner, lessee, proprietor,
16 manager, superintendent, agent, or employee of any place of public accommodation, to refuse, withhold
17 from, or deny any individual, or to attempt to refuse, withhold from, or deny any individual, directly or
18 indirectly, any of the accommodations, advantages, facilities, services, or privileges made available in any
19 place of public accommodation, or to segregate or discriminate against any such person in the use thereof, or
20 to publish, circulate, issue, display, post, or mail, either directly or indirectly, any communication, notice, or
21 advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of
22 any such place shall be refused, withheld from, or denied to any individual on the basis of race, color,
23 religion, ethnic or national origin, sex, pregnancy, childbirth or related medical conditions, age, sexual
24 orientation, gender identity, marital status, disability, or military status.25 C. The provisions of this section shall not apply to a private club, a place of accommodation owned by or
26 operated on behalf of a religious corporation, association, or society that is not in fact open to the public, or
27 any other establishment that is not in fact open to the public.28 D. The provisions of this section shall not prohibit (i) discrimination against individuals who are ~~less than~~
29 *younger than 18 years of age solely on the basis of such individual's age* or (ii) the provision of special
30 benefits, incentives, discounts, or promotions by public or private programs to assist persons who are 50
31 years of age or older.32 E. The provisions of this section shall not supersede or interfere with any state law or local ordinance that
33 prohibits a person under the age of 21 from entering a place of public accommodation.34 **§ 2.2-3905. Nondiscrimination in employment; definitions; exceptions.**

35 A. As used in this section:

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

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

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

47 "Employer" means a person employing (i) ~~at least five~~ *five* or more employees for each working day in each of 20
48 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, or (ii) one
49 or more domestic workers. ~~However, (a) for purposes of unlawful discharge under subdivision B 1 on the~~
50 ~~basis of race, color, religion, ethnic or national origin, military status, sex, sexual orientation, gender identity,~~
51 ~~marital status, disability, pregnancy, or childbirth or related medical conditions including lactation,~~
52 ~~"employer" means any person employing more than five persons or one or more domestic workers and (b) for~~
53 ~~purposes of unlawful discharge under subdivision B 1 on the basis of age, "employer" means any employer~~
54 ~~employing more than five but fewer than 20 persons.~~55 "Employment agency" means any person, or an agent of such person, regularly undertaking with or
56 without compensation to procure employees for an employer or to procure for employees opportunities to

57 work for an employer.

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

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

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

66 B. It is an unlawful discriminatory practice for:

67 1. An employer to:

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

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

77 2. An employment agency to:

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

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

84 3. A labor organization to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

171 **§ 2.2-3907. Procedures for a charge of unlawful discrimination; notice; investigation; report;**
 172 **conciliation; notice of the right to file a civil action; temporary relief.**

173 A. Any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint in
 174 writing under oath or affirmation with the Office of Civil Rights of the Department of Law (the Office).
 175 Unless otherwise stated in this chapter, a complaint alleging a violation of this chapter or federal statutes
 176 governing discrimination in employment that also falls under the jurisdiction of this chapter shall be filed
 177 with the Office no later than ~~300 days~~ *two years* from the day upon which the alleged discriminatory practice
 178 occurred. The Office itself may in a like manner initiate such a complaint. The complaint shall be in such
 179 detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the
 180 alleged unlawful discrimination.

181 B. Upon perfection of a complaint filed pursuant to subsection A, the Office shall timely serve a charge on
182 the respondent and provide all parties with a notice informing the parties of the complainant's rights,
183 including the right to commence a civil action, and the dates within which the complainant may exercise such
184 rights. In the notice, the Office shall notify the complainant that the charge of unlawful discrimination will be
185 dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with
186 the appropriate general district or circuit court.

187 C. The complainant and respondent may agree to voluntarily submit the charge to mediation without
188 waiving any rights that are otherwise available to either party pursuant to this chapter and without incurring
189 any obligation to accept the result of the mediation process. Nothing occurring in mediation shall be disclosed
190 by the Office or admissible in evidence in any subsequent proceeding unless the complainant and the
191 respondent agree in writing that such disclosure be made.

192 D. Once a charge has been issued, the Office shall conduct an investigation sufficient to determine
193 whether there is reasonable cause to believe the alleged discrimination occurred. Such charge shall be the
194 subject of a report made by the Office. The report shall be a confidential document subject to review by the
195 Attorney General, authorized Office employees, and the parties. The review shall state whether there is
196 reasonable cause to believe the alleged unlawful discrimination has been committed.

197 E. If the report on a charge of discrimination concludes that there is no reasonable cause to believe the
198 alleged unlawful discrimination has been committed, the charge shall be dismissed and the complainant shall
199 be given notice of his right to commence a civil action.

200 F. If the report on a charge of discrimination concludes that there is reasonable cause to believe the
201 alleged unlawful discrimination has been committed, the complainant and respondent shall be notified of
202 such determination and the Office shall immediately endeavor to eliminate any alleged unlawful
203 discriminatory practice by informal methods such as conference, conciliation, and persuasion. When the
204 Office determines that further endeavor to settle a complaint by conference, conciliation, and persuasion is
205 unworkable and should be bypassed, the Office shall issue a notice that the case has been closed and the
206 complainant shall be given notice of his right to commence a civil action.

207 G. At any time after a notice of charge of discrimination is issued, the Office or complainant may petition
208 the appropriate court for temporary relief, pending final determination of the proceedings under this section,
209 including an order or judgment restraining the respondent from doing or causing any act that would render
210 ineffectual an order that a court may enter with respect to the complainant. Whether it is brought by the
211 Office or by the complainant, the petition shall contain a certification by the Office that the particular matter
212 presents exceptional circumstances in which irreparable injury will result from unlawful discrimination in the
213 absence of temporary relief.

214 H. Upon receipt of a written request from the complainant, the Office shall promptly issue a notice of the
215 right to file a civil action to the complainant after (i) 180 days have passed from the date the complaint was
216 filed or (ii) the Office determines that it will be unable to complete its investigation within 180 days from the
217 date the complaint was filed. If the Office fails to issue such a notice pursuant to the provisions of this
218 subsection, the complainant may commence a timely civil action as provided in § 2.2-3908.

219 I. For any complaint or charge of discrimination for which the complainant has received a Notice of Right
220 to Sue from the E.E.O.C., the general district or circuit court having jurisdiction shall accept the E.E.O.C.
221 Notice of Right to Sue as a notice of the right to file a civil action under subsection H.