

HOUSE BILL NO. 753

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Adams, L.R.)

A BILL to amend and reenact §§ 2.2-3902 and 2.2-3905 of the Code of Virginia, relating to human rights; religious organizations; promotion of religious principles.

Be it enacted by the General Assembly of Virginia:

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

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

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

Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation, age, military status, disability, or 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.

Nothing in this chapter shall prohibit a religious corporation, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from taking any action as is calculated by it to promote the religious principles for which it is established or maintained.

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

27 other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the
28 Commonwealth for the general health, safety and welfare of the population at large.

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

37 **§ 2.2-3905. Nondiscrimination in employment; definitions; exceptions.**

38 A. As used in this section:

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

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

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

51 "Employer" means a person employing (i) 15 or more employees for each working day in each of
52 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person or
53 (ii) one or more domestic workers. However, (a) for purposes of unlawful discharge under subdivision B

54 1 on the basis of race, color, religion, national origin, military status, sex, sexual orientation, gender
55 identity, marital status, disability, pregnancy, or childbirth or related medical conditions including
56 lactation, "employer" means any person employing more than five persons or one or more domestic
57 workers and (b) for purposes of unlawful discharge under subdivision B 1 on the basis of age, "employer"
58 means any employer employing more than five but fewer than 20 persons.

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

62 "Joint apprenticeship committee" means the same as that term is defined in § 40.1-120.

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

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

70 B. It is an unlawful discriminatory practice for:

71 1. An employer to:

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

77 b. Limit, segregate, or classify employees or applicants for employment in any way that would
78 deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an
79 individual's status as an employee, because of such individual's race, color, religion, sex, sexual

80 orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including
81 lactation, age, military status, disability, or national origin.

82 2. An employment agency to:

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

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

89 3. A labor organization to:

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

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

99 c. Cause or attempt to cause an employer to discriminate against an individual in violation of
100 subdivisions a or b.

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

105 5. An employer, in connection with the selection or referral of applicants or candidates for
106 employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the

107 results of employment-related tests on the basis of race, color, religion, sex, sexual orientation, gender
108 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability,
109 or national origin.

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

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

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

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

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

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

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

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

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

