

SENATE BILL NO. 570

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute--Senator Ebbin)

A BILL to amend and reenact §§ 2.2-3905 and 2.2-3905.1 of the Code of Virginia, relating to Virginia Human Rights Act; definition of "employer."

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3905 and 2.2-3905.1 of the Code of Virginia are amended and reenacted as follows:

§ 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~~ five 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~~

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

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

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

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

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

43 B. It is an unlawful discriminatory practice for:

44 1. An employer to:

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

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

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

55 2. An employment agency to:

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

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

62 3. A labor organization to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 **§ 2.2-3905.1. Reasonable accommodations for persons with disabilities; unlawful**
152 **discriminatory practice; notice of rights.**

153 A. As used in this section:

154 "Employer" means any person, government, or political subdivision, or agent of such person,
155 government, or political subdivision, employing more than five employees for each working day in each
156 of 20 or more calendar weeks in the current or preceding calendar year.

157 "Person with a disability" means the term as defined in § 51.5-40.1.

158 "Physical impairment" means the term as defined in § 51.5-40.1.

159 "Mental impairment" means the term as defined in § 51.5-40.1.

160 "Otherwise qualified person with a disability" means the term as defined in subsection A of § 51.5-
161 41.

162 B. It shall be an unlawful discriminatory practice for an employer to:

163 1. Refuse to make reasonable accommodation to the known physical and mental impairments of
164 an otherwise qualified person with a disability, if necessary to assist such person in performing a particular
165 job, unless the employer can demonstrate that the accommodation would impose an undue hardship on
166 the employer. In determining whether an accommodation would constitute an undue hardship upon the
167 employer, the following shall be considered:

168 a. Hardship on the conduct of the employer's business, considering the nature of the employer's
169 operation, including composition and structure of the employer's workforce;

170 b. Size of the facility where employment occurs;

171 c. The nature and cost of the accommodations needed, taking into account alternative sources of
172 funding or technical assistance included under § 51.5-173;

173 d. The possibility that the same accommodations may be used by other prospective employees;

174 and

175 e. Safety and health considerations of the person with a disability, other employees, and the public.

176 2. Take adverse action against an employee who requests or uses a reasonable accommodation
177 pursuant to this section.

178 3. Deny employment or promotion opportunities to an otherwise qualified applicant or employee
179 because such employer will be required to make reasonable accommodation for a person with a disability.

180 4. Require an employee to take leave if another reasonable accommodation can be provided to the
181 known limitations related to the disability.

182 5. Fail to engage in a timely, good faith interactive process with an employee who has requested
183 an accommodation pursuant to this section to determine if the requested accommodation is reasonable
184 and, if such accommodation is determined not to be reasonable, discuss alternative accommodations that
185 may be provided.

186 C. An employer shall post in a conspicuous location and include in any employee handbook
187 information concerning an employee's rights to reasonable accommodation for disabilities. Such
188 information shall also be directly provided to (i) new employees upon commencement of their
189 employment and (ii) any employee within 10 days of such employee's providing notice to the employer
190 that such employee has a disability.

191 **2. That "person" means the same as that term is defined in § 1-230 of the Code of Virginia. The use**
192 **of "person" in the Virginia Human Rights Act (§ 2.2-3900 et seq. of the Code of Virginia, as**
193 **amended by this act) constitutes an explicit waiver of sovereign immunity for all government**
194 **agencies and political subdivisions in the Commonwealth and any agents thereof included in the**
195 **definition of such term.**

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