

REPORT OF THE

Human Rights Study Commission

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Report of the
Human Rights Study Commission**

to

The Governor and the General Assembly of Virginia

**Richmond, Virginia
December 1986**

**To: The Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia**

The Human Rights Study Commission was established as a result of two identical joint resolutions adopted by the 1985 Session of the General Assembly (House Joint Resolution No. 339 and Senate Joint Resolution No. 140). The Commission specifically was directed to review House Bill 900, which was introduced in the 1984 Session and carried over to the 1985 Session before being withdrawn in deference to this study. House Bill 900 proposed a comprehensive state human rights act and would have created a state human rights commission to administer and enforce the act. In this context, the Commission also was asked to review the laws of other states and any local ordinances currently in force among Virginia's local governments.

The Commission submitted an interim report to the 1986 General Assembly (House Document No. 30) indicating that substantial progress had been made but requesting an extension of the study in view of the complex nature of the subject matter. The study accordingly was extended for an additional year by House Joint Resolution 33 of the 1986 Session.

Appointed as House members of the Commission were Vincent F. Callahan, Jr., of Fairfax and Chief Patron of HJR No. 339, C. Richard Cranwell of Roanoke County, and Howard E. Copeland of Norfolk. Senate members were Richard L. Saslaw of Fairfax, Chief Patron of Senate Joint Resolution No. 140, and L. Douglas Wilder of Richmond City. Senator Wilder subsequently resigned from the Commission effective December 3, 1985, upon his election as Lieutenant Governor, and Senator Benjamin J. Lambert, III, of Richmond City was appointed in his place. Citizen members appointed by the Governor included John D. Bassett, III, of Galax, Harrietta Eley of Norfolk, Antonia V. Hollomon of Richmond City, Michael J. Schewel of Richmond City, and Jon D. Strother of Springfield. Delegate Callahan was elected Chairman and Senator Saslaw Vice-Chairman at the organizational meeting of the Commission in Richmond on August 16, 1985.

The first order of procedure for the Commission was to afford the public an opportunity to express its views through a series of public hearings. Hearings were held on September 17 and 18, 1985, in Richmond, Norfolk, and Fairfax. Thereafter, the Commission held a total of six meetings and work sessions in Richmond between October 1985 and April 1986 to review the public hearing record, analyse in detail House Bill 900, and assess the effectiveness of existing federal civil rights laws and state statutes. The result of these deliberations was a Discussion Draft of a Proposed Human Rights Act which the Commission printed and distributed widely for public comment. Public hearings were held in Roanoke on June 26 and in Richmond on June 27 and the record was held open for written comments thereafter. The Commission then met on October 14 and October 27 to review the comments and develop a revised version of a Comprehensive Human Rights Act, a copy of which is included as Appendix D of this report.

I. SUMMARY OF RECOMMENDATIONS

The Commission finds that there is a need for a comprehensive human rights statute and an agency with overall responsibility to administer its provisions. While there are some nondiscrimination provisions in Virginia law, the citizens of the Commonwealth are heavily dependent upon federal statutes and rules for protection from discrimination. The volume of complaints filed by citizens of Virginia under these federal provisions indicates that this state is by no means free of discrimination. The Commonwealth should take the initiative in addressing discrimination as a matter of state responsibility and should encourage its localities to do likewise. State and local action would afford greater access to assistance for those who believe that they have been the victims of discrimination, speedier resolution of complaints for all parties involved, and a public better informed about its rights and responsibilities with regard to unlawful discrimination. Accordingly, the Study Commission offers the following recommendations, which are described in more detail in this report and embodied in the proposed Virginia Human Rights Act.

1. A comprehensive Virginia Human Rights Act should be adopted. The Act would prohibit discrimination on the basis of race, color, religion, national origin, sex, age, marital status, or disability in employment, public accommodations, educational institutions, and housing. To the extent feasible, the Act should incorporate existing provisions of federal and state law.
2. A Human Rights Commission should be established to administer the provisions of the Act. The Commission should be empowered to investigate alleged violations of the Act, seek conciliation and voluntary resolution of complaints relating to alleged discriminatory practices, recommend remedial actions, and carry out various informational programs to promote non-discrimination. Failing voluntary resolution of complaints, however, remedies for discriminatory practices should be ordered only through the judicial process.

3. Enabling legislation should be adopted to allow any county, city, or town to establish a local human rights commission. If local ordinances confer substantially the same powers upon a local commission as are conferred upon the State Commission by the proposed State Act, the State Commission could defer cases to the local commission.

II. CURRENT SAFEGUARDS AGAINST DISCRIMINATION IN VIRGINIA

In comparison with citizens of other states, the citizens of Virginia are heavily reliant upon federal law, federal agencies, and federal courts for protection against discrimination. Nondiscrimination provisions in Virginia law are limited and major areas of discrimination, including the single largest area of private employment, are not addressed at all. Further, many of the provisions which are found in Virginia law offer an aggrieved party redress only through the judicial process, a practice which not only places a costly and discouraging burden upon the parties but also fails to encourage informal resolution of complaints.

Major Federal Legislation

Title II of the 1964 Civil Rights Act prohibits discrimination on the basis of race, color, religion, or national origin in public accommodations. Title VII of the same act prohibits discrimination on the basis of race, color, religion, sex, or national origin in employment. A third major area of federal coverage can be found in Title VIII of the 1968 Civil Rights Act, which prohibits discrimination on the basis of race, color, religion, sex, or national origin in housing.

Administration and enforcement of the employment provisions of Title VII are provided by the Equal Employment Opportunity Commission. Similarly, the Department of Housing and Urban Development is responsible for administration and enforcement of the housing provisions of the 1968 Act. In both instances, the federal statutes and regulations provide for the deferral of cases involving alleged discrimination to a comparable state agency if a state has adopted laws which afford substantially the same protections as those found in the federal statutes. Payments also will be made by the federal government to the state agency for the handling of cases at the state level.

Enforcement of the public accommodations provisions of Title II is through civil action or the United States Attorney General for preventive relief. Again, the federal statutes provide for deferral to state enforcement. If there is a state or local law prohibiting such discrimination and authorizing a state or local authority to grant or seek relief from such practice, no civil action may be filed in federal court until thirty days after written notice of such alleged discriminatory practice has been given to the state or local authority, and the federal court thereafter may stay any civil action pending the termination of state or local enforcement proceedings. In addition to the rights of an aggrieved individual to seek relief, the Attorney General is empowered to seek preventive relief through civil action in the federal courts where that office determines that a pattern or practice of discrimination is involved.

The 1964 Civil Rights Act also contains other enforcement provisions of relevance to this study. Title IV of the Act permits the Attorney General to institute suits upon written complaint from a parent or group of parents that their minor child or children are being deprived by a school board of equal protection of the laws or upon the complaint by an individual or his parent that he has been denied admission or continued attendance at a public college by reason of race, color, religion, sex, or national origin, if the Attorney General determines that the complaining parties are unable to initiate or maintain proceedings on their own behalf. Title III of the Act similarly authorizes the Attorney General to maintain appropriate legal proceedings in cases of complaints by individuals that they have been denied equal utilization of state or local public facilities on account of race, color, religion, or national origin.

In addition to these provisions covering discrimination in major areas, numerous federal laws address discrimination against certain groups or classes of individuals. These laws in most instances are based on the authority of Congress to prohibit discrimination in programs and activities receiving federal funds. Major examples include Title IX of the Education Amendments of 1972 prohibiting discrimination on the basis of sex, the Rehabilitation Act of 1973 prohibiting discrimination on the basis of handicap, and the Age Discrimination Act of 1975 prohibiting discrimination on the basis of age. The Age Discrimination in Employment Act of 1967, as amended, prohibits discrimination against persons age 40 to 70 in any industry affecting commerce and is based on the interstate commerce power.*

This overview is not an exhaustive catalogue of federal human rights protections. It does indicate, first, that federal activity is extensive, and secondly that the state is permitted to assume primary responsibility in many of these areas of nondiscrimination if it is willing to act.

Current Virginia Provisions

Virginia enacted a Fair Housing Law in 1972 (Chapter 5 of Title 36 of the Code of Virginia) which prohibits discrimination on the basis of race, color, religion, national origin, sex, elderliness, parenthood, or handicap. Administration and enforcement of the Law is the responsibility of the Virginia Real Estate Board, which for that purpose appoints a Fair Housing Administrator. The powers of the Board are directed towards disciplinary actions to revoke, suspend, or fail to renew the license of a licensee. The Board may advise the Attorney General if it has reasonable cause to believe that the law has been violated, and the Attorney General may seek to enjoin such violation in the circuit court. An individual adversely affected by discrimination has the right to seek injunctive relief and money damages through the judicial process.

The other major nondiscrimination statute to be found in Virginia is the Virginians with Disabilities Act, which was enacted by the General Assembly in 1985 (Title 51.01 of the Code of Virginia). Chapter 9 of the Act prohibits discrimination on the basis of disability in employment, educational institutions, exercising the right to vote, public places and places of public accommodations, and housing accommodations. The Department for Rights of the Disabled monitors the implementation of these provisions and assists persons with disabilities in the protection of their rights. Enforcement is by action before the circuit court, either by the aggrieved party or through representation of the Department or the Office of the Attorney General.

Virginia does not have a law which prohibits private employment discrimination along the lines of Title VII of the 1964 Civil Rights Act. According to the Virginia Advisory Committee to the United States Commission on Civil Rights, Virginia is one of only three states not having a state agency to enforce nondiscrimination in employment.

By executive orders since 1973, and most recently Executive Order Number One (January 11, 1986), discrimination has been prohibited in state executive branch employment on the basis of race, sex, color, national origin, religion, age, political affiliation, or disability. Complaints are investigated and resolution attempted by the Office of Employment Services and Program Evaluation, but that office cannot grant relief or institute legal proceedings. See also §2.1-116.10 of the Code of Virginia, which declares it the policy of the Commonwealth to provide equal employment without regard to race, color, religion, national origin, political affiliation, handicap, sex or age. Chapter 10.2 of Title 2.1, of which the cited section is a part, creates the Virginia Equal Employment Opportunity Council to monitor and make recommendations to state agencies regarding the implementation of that policy. Also to be noted is that complaints of discrimination on the basis of race, color, creed, political affiliation, age, handicap, national origin, or sex are grievable under the state's grievance procedure (§2.1-114.5:1).

The Virginia Fair Employment Contracting Act of 1980 provides that state agencies will not discriminate on the basis of race, color, religion, sex, or national origin in the awarding of contracts. It also requires that contracts of over ten thousand dollars shall contain provisions requiring the contractor to agree that the contractor will not so discriminate during the performance of the contract (Chapter 25 of Title 2.1). No penalties or enforcement procedures are provided, however. The Virginia Public Procurement Act, §11-44, also prohibits public bodies from discriminating on the basis of race, religion, color, sex, or national origin in the awarding of contracts.

Other than the provisions of the Virginians with Disabilities Act cited above, Virginia has neither statutory provisions or enforcement agencies with regard to discrimination in public accommodations.

In summary, Virginia has few statutory provisions or enforcement agencies which would track those at the federal level. The most obvious exception is in the area of housing. There are some administrative provisions regarding public employment discrimination at the state level, and some public contracting and procurement provisions require but provide no enforcement mechanism for nondiscrimination in private sector employment. Neither discrimination in public accommodations nor in educational institutions is addressed other than in the instance of prohibitions against discrimination on the basis of disability.

Virginia is one of only six states, according to the Virginia Advisory Committee to the United States Commission on Civil Rights, which has not adopted a human rights act and established an agency to administer it. This Study Commission's own survey indicates that the scope of coverage and the enforcement authority of such agencies in other states varies considerably. It should not be assumed that each of the other states has a human rights agency and act as comprehensive as is recommended by this Commission in this report. Nevertheless, it is clear that most states have moved further in this direction than has Virginia.

A final note with regards to human rights activity in Virginia is that Fairfax County and the City of Alexandria do have Human Relations Commissions which enforce local nondiscrimination ordinances. Alexandria's Commission has been established through charter provisions and Fairfax County's Commission operates by virtue of §§15.1-783.1 and 15.1-783.2 of the Code of Virginia (Urban County Executive Form of Government). Each of these agencies has been granted deferral status by the appropriate federal office to enforce nondiscrimination provisions in employment and housing. The local ordinances also address other types of discrimination. Arlington County is also authorized by virtue of §15.1-687.3 (County Manager Plan of Government) to establish a local commission on human rights. The City of Richmond through its charter has a human relations commission but its authority is considerably less than that of the Alexandria and Fairfax commissions and it is not regarded as an enforcement agency.

The foregoing description is not intended to be a complete inventory of nondiscrimination provisions in Virginia law. (The Equal Credit Opportunity Act, for example, prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, or age.) It does seek to identify Virginia's status with regard to major areas of discrimination addressed by major federal legislation and most commonly addressed by human rights statutes and enforcement agencies in other states.

The Need for a Comprehensive Human Rights Act and Human Rights Agency in Virginia

A key purpose of the series of public hearings held by the Commission was to ascertain whether there was in fact a need for a state human rights law and

Human Rights Commission in view of the existing federal protections. The overwhelming preponderance of the testimony was supportive of a state effort, including the availability of local commissions in communities which wish to support them. As might be expected, given the lack of state law, testimony centered heavily upon employment discrimination concerns. Included as Appendix A of this report is a table analysing complaints filed from Virginia with the federal Equal Employment Opportunity Commission. It will be seen that over the last five years (1981-1985), an average of over 2,600 cases per year were filed with E.E.O.C. by citizens of Virginia.

The position taken by individual citizens and by spokespersons for groups likely to be most affected emphasized what they considered the excessive length of time required by the E.E.O.C. process. On the other hand, the Virginia Manufacturers Association challenged the need for state level action. The Association argued that citizens of Virginia have been able to secure protection against employment discrimination in a timely fashion through the E.E.O.C. process. Its position also was that introducing a state level of enforcement in addition to the federal one would create confusion, increase costs of resolving complaints, and extend rather than reduce the time required to resolve complaints.

The Commission concluded that a state agency and local level agencies will be able to focus attention solely upon those cases arising in Virginia and thus should be able to process a larger number of cases in a more timely fashion. A series of deadlines and time tables have been incorporated into the proposed Act to ensure that such is the case and thereby reduce the time required to resolve complaints with a concomitant reduction in associated costs. Further, the Commission sees little or no opportunity for confusion since the recommended legislation consists of one comprehensive act based upon the framework of existing Virginia statutes and federal law.

The Commission also finds and concurs with the public hearing testimony that state and local agencies are likely to provide better citizen access to the protection process. The Commission further believes that public education and information regarding discriminatory practices and significant efforts to conciliate or otherwise informally resolve complaints short of the more formal and adversarial procedures are crucial aspects of the protection process. The state and local efforts embodied in the proposed Act should better promote those goals.

The conclusions drawn with regard to employment apply to an even greater extent in those areas, such as public accommodations, where recourse is to federal courts or the U. S. Attorney General rather than to a federal assistance agency. State and local agencies will be more readily available to handle complaints and will provide an important avenue not now open for education and for informal conciliation and resolution of complaints and practices in such areas of discrimination.

The Commission finally contends that the state should exercise its primary responsibility to its citizens to protect their rights. Virginia long has prided itself on a tradition of state independence and responsibility and decried the intrusion of federal authority into state affairs. It seems somewhat incongruous for Virginia to fail to take responsibility in an area where there is an obvious opportunity to do so.

The Commission finds no compelling reason to divide responsibility for enforcement of nondiscrimination provisions among several agencies and consequently recommends a comprehensive human rights act which will include all the major antidiscrimination provisions. The logical first step is to incorporate the major statutes and procedures now found in Virginia law. Accordingly, responsibility for fair housing should be transferred from the Virginia Real Estate Board to the Human Rights Commission and the nondiscrimination provisions of the Virginians with Disabilities Act should be incorporated in the comprehensive human rights act. The parts of the comprehensive act addressing coverages not now in Virginia law should parallel to the extent possible present federal statutes and rules. In this fashion, the coverages of the comprehensive act largely will be familiar to the interested parties and consistent with the Study Commission's desire to follow existing law rather than embark on major new antidiscrimination concerns.

III. THE COMPREHENSIVE HUMAN RIGHTS ACT

The National Conference of Commissioners on Uniform State Laws issued a model Anti-Discrimination Act in 1966. This Model Act was based on existing federal law and the laws of states which had developed state anti-discrimination acts up to that point. When interest arose early in this decade in a human rights act for Virginia, it apparently became clear to proponents of an act that the 1966 Model Act needed to be updated in view of further federal legislation, court decisions, and existing Virginia law. Accordingly, Carlyle C. Ring, Jr., of Alexandria, President of the National Conference of Commissioners on Uniform State Laws, commissioned a team of faculty and students at Washington and Lee University and the University of Virginia law schools to draft such an updated model. This work was done in 1983 and presented to the Statewide Conference on Civil Rights Complaints and Enforcement, held by the Virginia Advisory Committee to the United States Commission on Human Rights. Delegate Vincent Callahan of Fairfax, a member of the Advisory Committee, in turn introduced the Act as House Bill 900 in the 1984 Session.

This Study Commission approached its task with the philosophy that any comprehensive human rights act and a human rights commission it might recommend should so far as possible be within the existing framework of Virginia statutes already enacted into law and the federal law in the areas of major concern where Virginia had not acted. The Commission considered establishment of a solid base for antidiscrimination protection through state and local human rights commissions and filling of the major gaps in Virginia's present statutory protections to be the most immediate concerns. Any act proposed at this time should contain provisions from existing state or federal law which are familiar to those who have been involved in antidiscrimination activities, both those who advise and represent classes of protected citizens and those in the public and private sector upon whom the obligation rests to observe and protect and promote such protections. The Model Act as embodied in House Bill 900, while containing provisions which might be desirable, went beyond this scope.

The nondiscrimination provisions of the present Fair Housing Law, which for the most part also track Title VIII of the 1968 Civil Rights Act, were incorporated into Article 5 of the proposed Act with little change. The enforcement procedure is different, of course, since responsibility is shifted from the Real Estate Board to the proposed Human Rights Commission. The provisions of the Virginians with Disabilities Act also have been incorporated with minimum change. The format of the proposed Act, however, does require that the Disabilities Act provisions be broken up and dispersed throughout the proposed Act. The employment, public accommodations, and educational institutions articles of the proposed Act are patterned after provisions in respective federal statutes.

The main divisions of the proposed Act may be briefly summarized and described as follows.

Article 1. General Provisions

Article 1 declares it to be the policy of the Commonwealth to safeguard its citizens from discrimination and identifies the classes of discrimination prohibited by the Act. These include discrimination based on race, color, religion, national origin, sex, age, marital status, or disability. The Act is to be given a liberal construction, is not deemed to repeal other laws dealing with discrimination not in conflict with the Act unless specifically repealed, and does not supercede federal acts, rules, and regulations. It is not to be construed as affecting any programs established specifically to the benefit of persons with disabilities or programs in which a differentiation on the basis of age is reasonably necessary.

The article contains a number of definitions applicable to the Act as a whole. Those dealing with disabilities are taken from the present Virginians with Disabilities Act. The other definitions are generally taken from federal statute or, where necessary, from the NCCUSL Model Act. Other definitions specific to a particular area of discrimination may be found in the particular article of the Act addressing that subject.

The areas of discrimination covered by the Act include employment, public accommodations, educational institutions, and housing. Attention is called to Appendix B of this report which shows in tabular form a cross reference between areas of discrimination and protected classes in terms of present federal and state coverage. The reader is reminded that certain exemptions and qualifications may be placed on these general areas of coverage in the specific articles which deal with them.

Article 2. Discrimination in Employment

Federal statutes now prohibit discrimination in employment on the basis of race, color, religion, national origin, sex, age, and disability. Virginia law only addresses discrimination on the basis of disability. The prohibition against discrimination on the basis of marital status is a new coverage proposed in House Bill 900 which the Commission endorses and adds to this Act. For

purposes of the employment article, Article 1 defines age as being between forty and seventy years of age. This provision is based on the Federal Age Discrimination in Employment Act of 1967, which is applicable to employers, employment agencies, and unions engaged in an industry affecting interstate commerce. The Age Discrimination Act of 1975 does not contain this limitation and is applicable to any program receiving federal assistance. Because private employment is most likely to be affected by the provisions of the 1967 Act, and in view of the Commission's intent to remain as far as feasible within the constraints of existing requirements, the limitation on age was included in the proposed Act*. The federal provisions with regard to programs receiving federal assistance would still apply to the extent they now do so.

The article applies to private and public employers, employment agencies, labor organizations, and joint labor-management committees. Employers are covered if they employ fifteen or more employees, as is the provision of Title VII of the 1964 Civil Rights Act.

Article 3. Discrimination in Public Accommodations

Title II of the 1964 Civil Rights Act prohibits discrimination in places of public accommodation on the basis of race, color, religion, or national origin and is the basis for this article, along with the applicable provisions of the Virginians with Disabilities Act. The Study Commission recommends inclusion of sex, age, and marital status as protected classes in this article, although they are not now addressed by federal or state laws. An exception is provided so that any facility which is uniquely private and personal in nature, such as restrooms, shower rooms, and dormitory type lodging facilities, may require separation by sex. Private clubs are not covered by the article except at such times as the facilities are in fact being made available to the public. As specified in Article 1, the prohibition against discrimination on the basis of age applies to persons eighteen years of age and over.

Article 4. Educational Institutions

This article makes it a discriminatory practice to deny admission or full and equal access to educational and extracurricular programs on the basis of race, color, religion, national origin, sex, age, marital status, or disability. It applies to all public schools and educational institutions and to any private institution which is a recipient of state funds. Prohibitions against such discrimination are now found in federal but not state law with regard to race, color, religion, national origin, and sex. Prohibitions against discrimination on the basis of disability are found in federal law and in the Virginians with Disabilities Act. The provisions with regard to age and marital status are new. The article does contain exceptions for religious preference on the part of religious educational institutions or institutions operated or controlled by a religious institution. It also will allow an educational institution which traditionally and continually from its establishment had limited admission to students of one sex to continue such a policy. Exceptions are also provided for educational institutions carrying out plans to eliminate or reduce imbalances with regard to the several protected classes.

Article 5. Housing

This article incorporates the nondiscrimination provisions of the Virginia Fair Housing Law, which in turn is derived from Title VIII of the 1968 Civil Rights Act. Title VIII prohibited housing discrimination on the basis of race, color, religion, national origin, or sex. The Virginia Fair Housing Law extended the prohibition to include "elderliness, parenthood, or handicap." The proposed act substitutes the term age for elderliness but retains the current statutory authority for all adult or all elderly communities. The proposed act retains the provisions with regard to parenthood, but does not include the general prohibition on marital status found in the other articles of the act. The proposed act uses the term disability rather than handicap and incorporates the relevant provisions of the Virginians with Disabilities Act.

Article 6. Commission on Human Rights

The Commission on Human Rights is to consist of nine members appointed by the Governor and confirmed by the General Assembly for terms of four years. No more than five of the members may be from the same party, the Commission shall to the extent feasible reflect a diversity spelled out in the act, and the Commission must include at least one person in the business of real estate and at least one employer. A State Human Rights Director is to be appointed by and serve at the pleasure of the Governor.

The Commission on Human Rights is authorized to receive, investigate, seek to conciliate, hold hearings, and make findings and recommendations as to alleged violations of the Human Rights Act. The Commission is not authorized to order remedies; it may only recommend a settlement. If the respondent in a case declines to accept the recommendations of the Commission, the Commission forwards the case to the Attorney General who may then bring a civil action to resolve the complaint. Appendix C of this report offers a chart which shows the procedure under which complaints of discrimination would be processed. The main steps in the procedure may be summarized as follows.

1. A complaint must be filed within 180 days of the occurrence of the alleged discriminatory act. Alternatively, a complainant has 180 days from learning that the act occurred if such knowledge is obtained after the fact, but in no event can a complaint be filed more than 18 months after the alleged discriminatory act occurred.

2. The Commission has 180 days after a complaint is filed to determine whether reasonable cause exists to confirm that an alleged discriminatory practice has occurred and, if so, to seek to eliminate the practice through conference, conciliation, and persuasion. By the end of the 180 day period, the Commission either must have dismissed a complaint for lack of reasonable cause, the terms of a negotiated agreement must have been entered in court, or the Commission must have served notice upon the respondent for a formal hearing.

3. By day 300 after the filing of the complaint, the Commission must have conducted a hearing to determine whether probable cause exists that there has been a violation. If so, it also must have issued its recommendations and, if the recommendations are not accepted by the respondent, the matter must have been referred to the Attorney General if that is the Commission's intention. Finally, the Attorney General must have determined whether to proceed with a civil action and, if the decision is not to proceed, must have notified the complainant of that fact.

4. The complainant must file a civil action within one year of having filed the original complaint, should the Attorney General determine not to bring suit. However, a complainant may not file a civil action so long as the grievance is pending before the Commission. In effect, the complainant must allow the Commission process to run its course before seeking judicial relief and, in view of the deadlines noted above, the complainant may have a minimum of 65 days in which to bring an action if the Commonwealth fails to do so.

The remedies which the Commission may recommend are found in subsection C of §2.1-746 of the proposed act. These are also the remedies which the court may order, along with such other equitable relief as may be authorized law. The Commission may recommend or the court may order the payment of actual damages and reasonable attorney fees. There is a specific prohibition, however, against the awarding of punitive or exemplary damages.

The article also provides, in case of public contractors or respondents operating by virtue of a license issued by the Commonwealth, that the contracting agency or licensing agency be notified of either a Commission finding or court determination that a violation has occurred. The contracting agency or licensing agency in turn is authorized to take various disciplinary actions with regard to a licensee or with regard to existing contracts and the right to participate in future contracts.

Article 7. Miscellaneous Provisions

Article 7 contains several miscellaneous provisions, including prohibitions against retaliation. Interference with the performance of the duties of the Commission is made a class 2 misdemeanor.

Article 8. Local Human Rights Commissions

This article authorizes any county, city, or town, either individually or jointly, to create a human rights commission and establish a human rights ordinance. The ordinance essentially can parallel any of the provisions of the state act and the local commission can exercise the same powers locally as granted to the state commission at the state level. A savings clause is included for the few human rights commissions which now exist which will allow them to exercise any additional powers which they now enjoy. The purpose of this clause is to prevent disruption to these established local commissions. Article 8 provides that the state human rights commission may enter into agreements with

local commissions whereby the state will defer complaints to the affected local commission. The article also prevents dual filing with both the state and local commissions. The purpose of these provisions is to encourage the creation of effective local human rights enforcement efforts.

Staff and Budget of the Commission

The Commission has not included in the proposed act or in this report specific recommendations with regard to the size of the staff for the human rights commission or with regard to the organization and location of offices and services. These matters are better left to administrative decision.

The Commission would emphasize two principles which we believe should guide thinking about the operation of the Commission.

First, staffing of the Commission should be a phased process and it would not be necessary to incur the costs of the projected full staffing complement immediately. Initial staffing for the first year largely can be drawn from existing state positions, in the Office of Equal Employment Services and Program Evaluations and the Fair Housing Administrator among others, whose functions would be subsumed under the Human Rights Commission. The staff in turn could be expected to grow incrementally over the next three years at the same rate and reach the permanent level in the fourth year.

Second, allowance should be made for the fact that at least a part of the cost of the operation would be offset by payments from federal agencies once deferral status under the federal EEOC and HUD regulations is achieved. The amount of the payment and the number of cases is determined by contract and is based on an evaluation of the capacity of the state agency to process a number of cases, so that this source of funding also should phase in as the commission staff expands.

These assumptions are emphasized for a specific reason. The Study Commission reviewed a fiscal impact statement prepared by the Department of Planning and Budget in 1985 for House Bill 900. That analysis assumed a total staff of 50 persons for the Commission, with at least four different locations for offices. The Department estimated the costs annually at a net of \$1.2 million after offsetting for federal reimbursements for deferral cases. The Commission concluded that these estimates were somewhat high and probably underestimated the number of cases for which the state would be reimbursed by the federal agencies, but might not be unreasonably out of line for a fully operational Commission. It is highly unlikely, however, that a new Commission would begin to approximate that level of activity, or could efficiently and effectively do so, as a new agency in its first year. Further, that estimate fails to account for the offset which will be recaptured from current state programs, as in housing and state employment, by bringing these operations under the human rights commission, nor does it take into account the projected activities of local human rights commissions.

A more realistic view, we believe, was offered by a subcommittee of the Virginia Equal Employment Opportunity Committee (now Council) in 1984. That projection was for an initial year staffing level of fourteen and a cost of \$424,000, offset by a minimum of \$171,000 recaptured from existing positions for a net cost of \$253,000. The projection thereafter was for growth at the rate of 10 persons per year for the next three years to a full complement of 44 staff persons and a cost of \$1.1 million. However, this analysis assumed that by the end of the third year and into the fourth year a staff of that size could expect to receive payment for 1400 deferred cases from federal agencies. This offset would leave a net cost of \$571,000 for the fourth year. The number of cases in this analysis is almost three times that estimated by the Department of Planning and Budget in its analysis.

The Commission itself is not in a position to resolve the difference between these two estimates. Indeed, the two estimates are comparable in terms of the assumptions concerning staffing levels and gross cost of a fully operational agency. Testimony to the Commission from persons familiar with state and local agencies suggested that the Department's estimate was too conservative in the federal deferral caseload and fiscal offset which reasonably could be expected, and thus high in the net cost of the program. The more significant point is that a realistic approach will call for the phased development of the human rights commission with attendant lower initial costs.

Finally, the most important point which can be made with regard to the debate over the cost of the program is that either estimate represents a small investment in terms of the state's resources when weighed against an invaluable commitment to the basic rights of the citizens of the Commonwealth.

***Staff Note:** The Study Commission made its recommendations prior to the enactment of PL 99-592 by the Ninety-Ninth Congress. PL 99-592, which was signed into law by President Reagan on October 31, 1986, eliminated the age 70 ceiling of the Age Discrimination in Employment Act. As amended, that act will apply to all those forty years of age and over.

Respectfully submitted,

Vincent F. Callahan, Jr., Chairman

Richard L. Saslaw, Vice-Chairman

Howard E. Copeland

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Harrietta Eley

Antonia V. Hollomon

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Jon D. Strother

STATEMENT OF DELEGATE C. RICHARD CRANWELL

Philosophically, I support a reasonable Human Rights Act for the Commonwealth. I say this because I feel that the various executive orders in the Commonwealth already have an effective Human Rights Policy.

Overall, I agree with the thrust and purpose of the Draft Human Rights Act. However, I think the Draft Act will require so many technical amendments that it will be impossible to pass during the short session. Thus, although I agree philosophically with the thrust of the Draft Human Rights Act, I feel that it is so technically flawed as to make its passage an impossibility.

STATEMENT OF JOHN D. BASSETT, III

I vote against the proposed Human Rights Act for the following reason. Virtually everything included in this proposed state statute is presently covered by either federal and/or state laws. What is new and needed could easily be incorporated in present statutes. I find this a needless duplication.

Certainly the goals of this Commission are lofty and well meaning; but with our government faced with a \$200 billion budget deficit and \$175 billion trade deficit (December, 1986, being the highest monthly deficit in the history of our country), we do not need to burden our taxpayers and our businesses with inefficient government. If there was no such legislation as proposed at either the federal or state level, I would be totally in favor of a Virginia Human Rights Commission. However, this is not the case. More does not necessarily mean better. There may be some justification for localities having Human Rights Commission. If additional services are needed, they are probably needed at the local level.

Charges Received By E.E.O.C.
From Virginia

	1981	1982	1983	1984	1985	TOTALS
Age	1,070	978	1,414	1,314	1,127	5,903
Color	2	3	4	6	4	19
Religion	35	40	32	38	33	178
Sex	588	578	848	720	619	3,353
National origin	65	83	118	79	57	402
	278	312	494	489	465	2,038
Equal Pay	58	55	81	112	51	357
Retaliation	131	119	160	192	256	858
TOTALS	2,227	2,168	3,151	2,950	2,612	13,108

TABLE 1
VIRGINIA REAL ESTATE BOARD --- TYPE OF COMPLAINT BY YEAR AND BY TYPE OF HOUSING
July 1975 to December 31, 1985

TYPE OF COMPLAINT	1975 to 1981			1982			1983			1984			1985			GRAND TOTAL
	Being Sold	Being Rented	Total Before 1982	Being Sold	Being Rented	Total 1983	Being Sold	Being Rented	Total 1984	Being Sold	Being Rented	Total 1985	Being Sold	Being Rented	Total 1985	
Race or Color	54	251	305	15	89	104	18	50	68	6	43	49	10	46	56	582
Religion	--	1	1	1	8	9	--	1	1	--	2	2	--	10	10	23
National Origin	10	14	24	3	12	15	1	2	3	--	3	3	1	4	5	50
Sex	9	31	40	2	12	14	2	18	20	3	13	16	1	29	30	120
Parenthood	--	--	--	--	--	--	--	1	1	--	--	--	--	7	7	8
Elderliness	1	--	1	--	--	--	--	--	--	--	--	--	--	--	--	1
Handicap	--	--	--	--	1	1	--	--	--	1	2	3	--	3	3	7
Other	2	1	3	--	1	1	--	2	2	1	1	2	1	3	4	12
Multiple Complaints	<9>	<19>	<28>	<2>	<15>	<17>	<2>	<10>	<12>	<2>	<8>	<10>	<1>	<24>	<25>	<92>
Total	67	279	346	19	108	127	19	64	83	9	56	65	12	78	90	711

May 12, 1986

Virginia Department of Commerce

TABLE 4

Virginia Real Estate Board Fair Housing Complaints
by Region by Year
From July 1975 to December 31, 1985

REGION	YEAR					
	1975 to 1981	1982	1983	1984	1985	TOTAL
Northern VA	82	14	5	10	10	121
Fredericksburg	7	1	0	0	2	10
Winchester	8	0	0	0	1	9
Culpeper	1	0	0	0	0	1
Harrisonburg	1	0	0	0	0	1
Charlottesville	8	1	1	1	1	12
Central VA	14	9	9	4	6	42
Richmond City	115	65	23	15	14	232
Tidewater	65	18	24	17	8	132
Petersburg	19	2	6	3	4	34
Farmville	3	1	3	1	1	9
Roanoke	19	1	2	5	2	29
Bristol	3	0	1	4	0	8
Pulaski	6	2	0	1	0	9
Staunton	4	0	0	0	1	5
Lynchburg	17	9	7	2	3	38
Total by Year	372	123	81	63	53	692

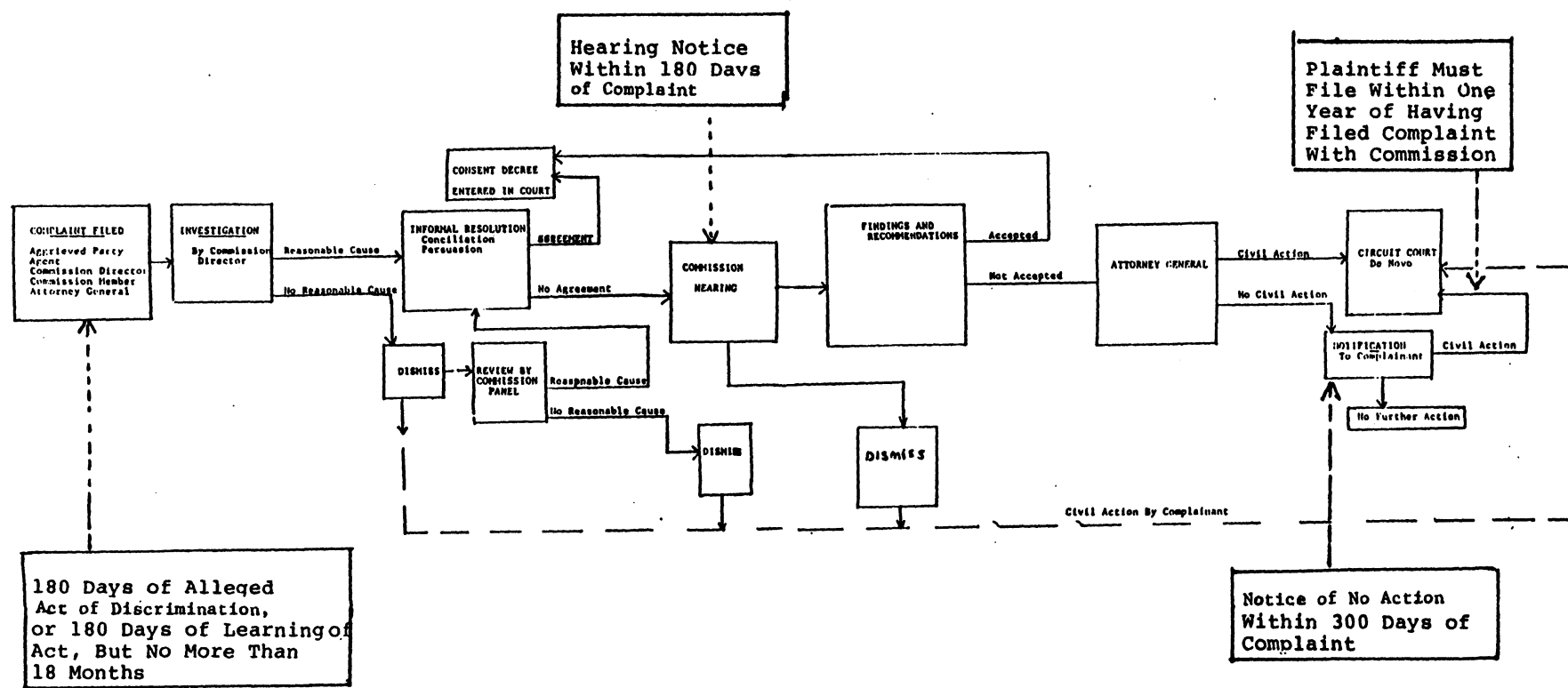
	<u>RACE</u>	<u>COLOR</u>	<u>RELIGION</u>	<u>NATIONAL ORIGIN</u>	<u>SEX</u>	<u>AGE</u>	<u>MARITAL STATUS</u>	<u>DISABILITY</u>
EMPLOYMENT	PF	PF	PF	PF	PF	PF	P	PFV
PUBLIC ACCOMMODATIONS	PF	PF	PF	PF	P	P	P	P V
EDUCATIONAL INSTITUTIONS	PF	PF	PF	PF	PF	P	P	PFV
HOUSING	PFV	PFV	PFV	PFV	PFV	P V*	P V**	P V

P = Preliminary Draft
 F = Existing Federal Law
 V = Existing Virginia Law

* elderliness

** "Parenthood"

PROCEDURE AND TIME TABLE: PROPOSED HUMAN RIGHTS COMMISSION



VIRGINIA COMPREHENSIVE HUMAN RIGHTS ACT

Proposed by the
Virginia Human Rights Study Commission

To The
Governor and the General Assembly of Virginia

November, 1986

A BILL to amend and reenact §§ 2.1-342, 51.01-3, and 51.01-37 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 43, consisting of sections numbered 2.1-714 through 2.1-757, and in Title 24.1 a section numbered 24.1-41.3, and to repeal Chapter 5 of Title 36, consisting of §§ 36-86 through 36-96, and Chapter 9 of Title 51.01 consisting of §§ 51.01-40 through 51.01-46, to establish comprehensive human rights act and to create a commission on human rights; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342, 51.01-3, and 51.01-37 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 43, consisting of sections numbered 2.1-714 through 2.1-757, and in Title 24.1 a section numbered 24.1-41.3, as follows:

§ 2.1-342. Official records to be open to inspection; procedure for requesting record and responding to request; charges; exceptions to application of chapter.—(a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to any such citizen of this Commonwealth, nor to representatives of newspapers and magazines with circulation in this Commonwealth, and representatives of radio and television stations broadcasting into this Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within fourteen calendar days from the receipt of the request by the public body. Such citizen request shall designate the requested records with reasonable specificity. If the requested records or public body is excluded from the provisions of this chapter, the public body to which the request is directed shall within fourteen calendar days from the receipt of the request tender a written explanation as to why the records are not available to the requestor. Such explanation shall make specific reference to the applicable provisions of this chapter or other Code sections which make the requested record unavailable. In the event a determination of the availability of the requested records may not be made within the fourteen-calendar-day period, the public body to which the request is directed shall inform the requestor as such, and shall have an additional ten calendar days in which to make a determination of availability. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The public body may make reasonable charges for the copying and search time expended in the supplying of such records; however, in no event shall such charges exceed the actual cost to the public body in supplying such records. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

(b) The following records are excluded from the provisions of this chapter:

(1) Memoranda, correspondence, evidence and complaints related to criminal investigations, reports submitted to the state and local police and the campus police departments of public institutions of higher education as established by Chapter 17 (

1 23-232 et seq.) of Title 23 of the Code of Virginia in confidence, and all records of persons
 2 imprisoned in penal institutions in this Commonwealth provided such records relate to the
 3 said imprisonment. Information in the custody of law-enforcement officials relative to the
 4 identity of any individual other than a juvenile who is arrested and charged, and the status
 5 of the charge or arrest, shall not be excluded from the provisions of this chapter.

6 (2) Confidential records of all investigations of applications for licenses and all licensees
 7 made by or submitted to the Alcoholic Beverage Control Board.

8 (3) State income tax returns, personal property tax returns, scholastic records and
 9 personnel records, except that such access shall not be denied to the person who is the
 10 subject thereof, and medical and mental records, except that such records can be
 11 personally reviewed by the subject person or a physician of the subject person's choice;
 12 however, the subject person's mental records may not be personally reviewed by such
 13 person when the subject person's treating physician has made a part of such person's
 14 records a written statement that in his opinion a review of such records by the subject
 15 person would be injurious to the subject person's physical or mental health or well-being.
 16 For the purposes of this chapter such statistical summaries of incidents and statistical data
 17 concerning patient abuse as may be compiled by the Commissioner of the Department of
 18 Mental Health and Mental Retardation shall be open to inspection and releasable as
 19 provided in subsection (a) above. No such summaries or data shall include any patient
 20 identifying information. Where the person who is the subject of scholastic or medical and
 21 mental records is under the age of eighteen, his right of access may be asserted only by
 22 his guardian, or his parent, including a noncustodial parent, unless such parent's parental
 23 rights have been terminated or a court of competent jurisdiction has restricted or denied
 24 such access. In instances where the person who is the subject thereof is an emancipated
 25 minor or a student in a state-supported institution of higher education such right of access
 26 may be asserted by the subject person.

27 (4) Memoranda, working papers and correspondence held or requested by members of
 28 the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney
 29 General or the mayor or other chief executive officer of any political subdivision of the
 30 Commonwealth or the president or other chief executive officer of any state-supported
 31 institutions of higher education.

32 (4a) Written opinions of the city and county attorneys of the cities, counties and towns
 33 in the Commonwealth and any other writing protected by the attorney-client privilege.

34 (5) Memoranda, working papers and records compiled specifically for use in litigation
 35 or as a part of an active administrative investigation concerning a matter which is properly
 36 the subject of an executive or closed meeting under § 2.1-344 and material furnished in
 37 confidence with respect thereto.

38 (6) Confidential letters and statements of recommendation placed in the records of
 39 educational agencies or institutions respecting (i) admission to any educational agency or
 40 institution, (ii) an application for employment, or (iii) receipt of an honor or honorary
 41 recognition.

42 (7) Library records which can be used to identify both (i) any library patron who has
 43 borrowed material from a library and (ii) the material such patron borrowed.

44 (8) Any test or examination used, administered or prepared by any public body for
 45 purposes of evaluation of (i) any student or any student's performance, (ii) any employee
 46 or employment seeker's qualifications or aptitude for employment, retention, or promotion,
 47 (iii) qualifications for any license or certificate issued by any public body.

48 As used in this subdivision (8), "test or examination" shall include (i) any scoring key
 49 for any such test or examination, and (ii) any other document which would jeopardize the
 50 security of such test or examination. Nothing contained in this subdivision (8) shall prohibit
 51 the release of test scores or results as provided by law, or limit access to individual
 52 records as is provided by law. However, the subject of such employment tests shall be
 53 entitled to review and inspect all documents relative to his performance on such
 54 employment tests.

1 When, in the reasonable opinion of such public body, any such test or examination no
 2 longer has any potential for future use, and the security of future tests or examinations
 3 will not be jeopardized, such test or examination shall be made available to the public.
 4 However, minimum competency tests administered to public school children shall be made
 5 available to the public contemporaneously with statewide release of the scores of those
 6 taking such tests, but in no event shall such tests be made available to the public later
 7 than six months after the administration of such tests.

8 (9) Applications for admission to examinations or for licensure and scoring records
 9 maintained by the Department of Health Regulatory Boards or any board in that
 10 department on individual licensees or applicants. However, such material may be made
 11 available during normal working hours for copying, at the requestor's expense, by the
 12 individual who is subject thereof, in the offices of the Department of Health Regulatory
 13 Boards or in the offices of any health regulatory board, whichever may possess the
 14 material.

15 (10) Records of active investigations being conducted by the Department of Health
 16 Regulatory Boards or by any health regulatory board in the Commonwealth.

17 (11) Memoranda, legal opinions, working papers and records recorded in or compiled
 18 exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

19 (12) Reports, documentary evidence and other information as specified in §§ 2.1-373.2
 20 and 63.1-55.4.

21 (13) Proprietary information gathered by or for the Virginia Port Authority as provided
 22 in § 62.1-134.1 or § 62.1-132.4.

23 (14) Contract cost estimates prepared for the confidential use of the Department of
 24 Highways and Transportation in awarding contracts for construction or the purchase of
 25 goods or services.

26 (15) Vendor proprietary information software which may be in the official records of a
 27 public body. For the purpose of this section, "vendor proprietary software" means computer
 28 programs acquired from a vendor for purposes of processing data for agencies or political
 29 subdivisions of this Commonwealth.

30 (16) Data, records or information of a proprietary nature produced or collected by or
 31 for faculty or staff of state institutions of higher learning, other than the institutions'
 32 financial or administrative records, in the conduct of or as a result of study or research on
 33 medical, scientific, technical or scholarly issues, whether sponsored by the institution alone
 34 or in conjunction with a governmental body or a private concern, where such data, records
 35 or information have not been publicly released, published, copyrighted or patented.

36 (17) Financial statements not publicly available filed with applications for industrial
 37 development financings.

38 (18) Lists of registered owners of bonds issued by a political subdivision of the
 39 Commonwealth, whether the lists are maintained by the political subdivision itself or by a
 40 single fiduciary designated by the political subdivision.

41 (19) Confidential proprietary records, voluntarily provided by private business to the
 42 Division of Tourism of the Department of Economic Development, used by that Division
 43 periodically to indicate to the public statistical information on tourism visitation to Virginia
 44 attractions and accommodations.

45 (20) Information which meets the criteria for being filed as confidential under the
 46 Toxic Substances Information Act (§ 32.1-239 et seq.) of Title 32.1, regardless of how or
 47 when it is used by authorized persons in regulatory processes.

48 (21) Documents as specified (i) in subdivision 2 of subsection B of § 10-186.9, and (ii)
 49 in § 58.1-3 of the Code of Virginia.

50 (22) Confidential records, including victim identity, provided to or obtained by staff in a
 51 rape crisis center or a program for battered spouses.

52 (23) Computer software developed by or for a state agency, state-supported institution of
 53 higher education or political subdivision of the Commonwealth.

54 (24) Investigator notes, and other correspondence and information, furnished in

1 confidence with respect to an active investigation of individual employment discrimination
 2 complaints made to the Department of Personnel and Training; however, nothing in this
 3 section shall prohibit the disclosure of information taken from inactive reports in a form
 4 which does not reveal the identity of charging parties, persons supplying the information or
 5 other individuals involved in the investigation.

6 (25) Fisheries data which would permit identification of any person or vessel, except
 7 when required by court order as specified in § 28.1-23.2.

8 (26) Records of active investigations being conducted by the Department of Medical
 9 Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of
 10 Virginia.

11 (27) Documents and writings furnished by a member of the General Assembly to a
 12 meeting of a standing committee, special committee or subcommittee of his house
 13 established solely for the purpose of reviewing members' annual disclosure statements and
 14 supporting materials filed under § 2.1-612 or of formulating advisory opinions to members
 15 on standards of conduct, or both.

16 (28) *Investigative notes and other correspondence and information furnished in*
 17 *confidence with respect to an active investigation or conciliation process involving an*
 18 *alleged discriminatory action under the Virginia Human Rights Act; however, nothing in*
 19 *this section shall prohibit the distribution of information taken from inactive reports in a*
 20 *form which does not reveal the identity of the parties involved or other persons supplying*
 21 *information.*

22 (c) Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et
 23 seq.) of this title shall be construed as denying public access to contracts between a public
 24 official and a public body, other than contracts settling public employee employment
 25 disputes held confidential as personnel records under subdivision (3) of subsection (b) of
 26 this section, or to records of the position, job classification, official salary or rate of pay of,
 27 and to records of the allowances or reimbursements for expenses paid to any public
 28 officer, official or employee at any level of state, local or regional government in this
 29 Commonwealth whatsoever. The provisions of this subsection, however, shall not apply to
 30 records of the official salaries or rates of pay of public employees whose annual rate of
 31 pay is \$10,000 or less.

32 CHAPTER 43.

33 VIRGINIA HUMAN RIGHTS ACT.

34 Article 1.

35 General .

36 § 2.1-714. *Short title.*—This chapter shall be known and cited as the Virginia Human
 37 Rights Act.

38 § 2.1-715. *Declaration of policy.*—It is the policy of the Commonwealth of Virginia:

39 1. *To safeguard all individuals within the Commonwealth from unlawful discrimination*
 40 *because of race, color, religion, national origin, sex, age, marital status or disability,*
 41 *thereby to protect their personal dignity and freedom from humiliation in places of public*
 42 *accommodation, including educational institutions, and in real estate transactions, to make*
 43 *available to the Commonwealth their full productive capacities in employment, to secure*
 44 *the Commonwealth against domestic strife and unrest which would menace its democratic*
 45 *institutions, to preserve the public safety, health and general welfare, and to further the*
 46 *interests, rights and privileges of individuals within the Commonwealth; and*

47 2. *To protect citizens of the Commonwealth against unfounded charges of unlawful*
 48 *discrimination.*

49 § 2.1-716. *Construction; other programs to aid persons with disabilities, minors and the*
 50 *elderly.*—The provisions of this chapter shall be construed liberally for the accomplishment
 51 of the policies thereof. Except as provided in the second enactment of this act, nothing
 52 contained in this chapter shall be deemed to repeal any of the provisions of any other law
 53 of the Commonwealth relating to discrimination because of race, color, religion, national
 54 origin, sex, age, marital status or disability, but shall supersede any law which purports to

1 require or permit doing any act which is an unlawful discriminatory practice under this
2 chapter. Nothing in this chapter shall be construed to supersede any federal rule,
3 regulation or act.

4 Nothing in this chapter shall be construed to prohibit or alter any program, service,
5 facility, school, or privilege which is afforded, oriented or restricted to a person because of
6 disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

7 In addition, nothing in this Act shall be construed to affect any governmental
8 programs, law or activity differentiating between persons on the basis of age over the age
9 of eighteen years (i) where such differentiation is reasonably necessary to normal operation
10 or such activity is based upon reasonable factors other than age or (ii) where such
11 programs, law or activity constitutes a legitimate exercise of powers of the state for the
12 general health, safety and welfare of the population at large.

13 It is the policy of this Commonwealth that persons with disabilities shall be employed
14 in the state service, the service of the political subdivisions of the Commonwealth, in the
15 public schools, and in all other employment supported in whole or in part by public funds
16 on the same terms and conditions as other persons unless it is shown that the particular
17 disability prevents the performance of the work involved.

18 § 2.1-717. Definitions.—As used in this chapter, unless the context otherwise requires:

19 "Commission" means the Commission on Human Rights created by this chapter.

20 "Commissioner" means a member of the Commission.

21 "Disability" means any condition or characteristic that renders a person a "person
22 with a disability" as defined in this section.

23 "Discrimination" means any direct or indirect practice or act which has the purpose or
24 effect of excluding, evicting, restricting, denying, refusing, limiting, or segregating a person
25 or persons on the basis of race, color, religion, national origin, sex, age, marital status or
26 disability, or the aiding, abetting, inciting, coercing or compelling thereof, except that, as
27 provided by the Constitution of Virginia, the mere separation of the sexes shall not be
28 considered discrimination if, as provided by the United States Constitution, such separation
29 is a matter of privacy .

30 "Discrimination because of age" or "discrimination on the basis of age," unless the
31 context clearly indicates otherwise, means discrimination because of or on the basis of age
32 between forty and seventy for the purpose of the employment provisions of this chapter
33 and otherwise because of the chronological age of a person eighteen years of age or older.

34 "Major life activities" means functions such as caring for oneself, performing manual
35 tasks, walking, seeing, hearing, speaking, breathing, learning and working.

36 "Marital status" means the state of being married, single, divorced, separated, or
37 widowed and the usual conditions associated therewith, including parenthood.

38 "Mental impairment" means (i) a disability attributable to mental retardation, autism,
39 or any other neurologically handicapping condition closely related to mental retardation
40 and requiring treatment similar to that required by mentally retarded individuals; or (ii) an
41 organic or mental impairment that has substantial adverse effects on an individual's
42 cognitive or volitional functions, including central nervous system disorders or significant
43 discrepancies among mental functions of an individual. For the purposes of Article 2, the
44 term "mental impairment" does not include active alcoholism or current drug addiction
45 and does not include any mental impairment, disease or defect that has been successfully
46 asserted by an individual as a defense to any criminal charge.

47 "Minority" or "minority group" means any person or persons who are members of or
48 constitute a class of citizens protected against discrimination by the provisions of this act.

49 "National origin" means the place in which a person or one of his or her ancestors
50 was born.

51 "Otherwise qualified person with a disability" means a person with a disability who is:

52 1. For the purposes of Article 2 qualified without accommodation, except as otherwise
53 provided in this chapter, to perform the duties of a particular job or position; or

54 2. For the purposes of Article 4 meets all the requirements for admission to an

1 educational institution or meets all the requirements for participation in its extracurricular
2 programs.

3 "Person" includes one or more individuals, whether male or female, corporations,
4 partnerships, associations, labor organizations, legal representatives, mutual companies,
5 joint-stock companies, trusts, unincorporated organizations, trustees, trustees in
6 bankruptcy, receivers, fiduciaries, the Commonwealth, any of its political or civil
7 subdivisions, and any agency or instrumentality thereof.

8 "Person with a disability" means any person who has a physical or mental impairment
9 which substantially limits one or more major life activities, or has a record of such an
10 impairment and which:

11 1. For purposes of Article 2 is unrelated to the individual's ability to perform the
12 duties of a particular job or position, or is unrelated to the individual's qualifications for
13 employment or promotion;

14 2. For purposes of Article 3 is unrelated to the individual's ability to utilize and benefit
15 from a place of public accommodation or public service;

16 3. For purposes of Article 4 is unrelated to the individual's ability to utilize and benefit
17 from educational opportunities, programs, and facilities at an educational institution;

18 4. For purposes of Article 5 is unrelated to the individual's ability to acquire, rent, or
19 maintain property.

20 "Physical impairment" means any physical condition, cosmetic disfigurement, or
21 anatomical loss which is caused by bodily injury, birth defect, or illness.

22 "Religion" includes all aspects of religious observance, practice, and belief.

23 "Sex" means the status of being male or female. The phrases "discrimination because
24 of sex" or "discrimination on the basis of sex" include, but are not limited to,
25 discrimination because of or on the basis of pregnancy, childbirth, or related medical
26 conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be
27 treated the same for all employment-related purposes, including receipt of benefits under
28 fringe benefit programs, as other persons not so affected but similar in their ability or
29 inability to work.

30 "Unlawful discriminatory practice" means those discriminatory practices which are so
31 specified in §§ 2.1-719 through 2.1-724, 2.1-728, 2.1-732, 2.1-734, 2.1-737 and 2.1-750. A
32 statutory distinction or classification is not included within the meaning of an "unlawful
33 discriminatory practice" if the statute is uniformly applied and bears a reasonable
34 relationship to a legitimate legislative objective or, if based on sex, is substantiantially
35 related to the achievement of an important legislative objective, and if such classification
36 is not based upon alienage, race, or national origin.

37 A statutory or regulatory distinction or classification based upon age is not included
38 within the definition of an "unlawful discriminatory practice" if the distinction or
39 classification provides a benefit to the class or persons so distinguished or classified, or
40 creates a distinction or classification based on age which is reasonably designed to
41 promote a legitimate objective or which relates to the general health, safety and welfare
42 of the population at large.

43 Article 2 .

44 Discrimination in Employment.

45 § 2.1-718. Definitions.—As used in this article:

46 "Employee" means an individual employed by an employer, except that the term
47 "employee" shall not include any person elected to public office in the Commonwealth or
48 political subdivision of the Commonwealth by the qualified voters thereof, or any person
49 chosen by such officer to be on such officer's personal staff, or an appointee on the
50 policy-making level or an immediate adviser with respect to the exercise of the
51 constitutional or legal powers of the office. The exemptions set forth in the preceding
52 sentence shall not include employees subject to civil service laws of the Commonwealth or
53 of any agency or political subdivision of the Commonwealth.

54 "Employer" means a person who employs fifteen or more individuals, exclusive of

1 relatives by blood, marriage, or adoption, for each working day in each of twenty or more
2 calendar weeks in the current or preceding calendar year, or an agent of such a person.

3 "Employment agency" means a person regularly undertaking with or without
4 compensation to procure employees for an employer or to procure for employees
5 opportunities to work for an employer and includes an agent of such a person.

6 "Joint labor-management committee" means a committee whose members include
7 representatives of an employer and a labor organization and which controls
8 apprenticeship, on-the-job, or other training or retraining programs.

9 "Labor organization" means:

10 1. An organization of any kind, an agency or employee representation committee,
11 group, association, or plan in which employees participate and which exists for the
12 purpose, in whole or in part, of dealing with employers concerning grievances, labor
13 disputes, wages, rates of pay, hours, or other terms or conditions of employment;

14 2. A conference, general committee, joint or system board, or joint council which is
15 subordinate to a national or international labor organization; or

16 3. An agent of a labor organization.

17 § 2.1-719. Unlawful discriminatory practices by employers. It is an unlawful
18 discriminatory practice for an employer:

19 1. To fail or refuse to hire, to discharge, or otherwise to discriminate against an
20 individual with respect to compensation or the terms, conditions, or privileges of
21 employment, because of race, color, religion, sex, national origin, marital status, disability,
22 or age between forty and seventy; or

23 2. To limit, segregate, or classify an employee in a way which would deprive or tend
24 to deprive an individual of employment opportunities or otherwise adversely affect the
25 status of an employee, because of race, color, religion, sex, national origin, marital status,
26 disability, or age between forty and seventy.

27 § 2.1-720. Unlawful discriminatory practices by employment agencies.—It is an unlawful
28 discriminatory practice for an employment agency to fail or refuse to refer for
29 employment, or otherwise to discriminate against, an individual because of race, color,
30 religion, sex, national origin, marital status, disability, or age between forty and seventy,
31 or to classify or refer for employment an individual on the basis of race, color, religion,
32 sex, national origin, marital status, disability, or age between forty and seventy.

33 § 2.1-721. Unlawful discriminatory practices by labor organizations.—It is an unlawful
34 discriminatory practice for a labor organization:

35 1. To exclude or to expel from membership, or otherwise to discriminate against, a
36 member or applicant for membership because of race, color, religion, sex, national origin,
37 marital status, disability, or age between forty and seventy;

38 2. To limit, segregate, or classify membership, or to classify or to fail or refuse to refer
39 to employment an individual in a way

40 a. which would deprive or tend to deprive an individual of employment opportunities,
41 or

42 b. which would limit employment opportunities or otherwise adversely affect the status
43 of an employee or of an applicant for employment, because of race, color, religion, sex,
44 national origin, marital status, disability, or age between forty and seventy; or

45 3. To cause or attempt to cause an employer to violate this chapter.

46 § 2.1-722. Training programs.—It is an unlawful discriminatory practice for an employer,
47 labor organization, or joint labor-management committee controlling apprenticeship,
48 on-the-job, or other training or retraining program, to discriminate against an individual
49 because of race, color, religion, sex, national origin, marital status, disability or age
50 between forty and seventy, in admission to, or employment in, a program established to
51 provide apprenticeship or other training.

52 § 2.1-723. Other discriminatory practices.—A. It is an unlawful discriminatory practice
53 for an employer, labor organization, joint labor-management committee, or employment
54 agency to print or publish or cause to be printed or published a notice or advertisement

1 relating to employment by the employer or membership in or a classification or referral
 2 for employment by the labor organization, or relating to a classification or referral for
 3 employment by the employment agency, indicating a preference, limitation, specification,
 4 or discrimination based on race, color, religion, sex, national origin, marital status,
 5 disability, or age between forty and seventy, except when a preference, limitation,
 6 specification, or discrimination based on religion, sex, national origin, marital status,
 7 disability, or age between forty and seventy is a bona fide occupational qualification for
 8 employment.

9 B. Unless specifically acting in accordance with federal equal employment opportunity
 10 guidelines or regulations approved by the Commission, or as otherwise permitted or
 11 required by Virginia law, it is an unlawful discriminatory practice for an employer,
 12 employment agency, labor organization, or joint labor-management committee:

13 1. To make or use a written or oral inquiry or form of application that elicits or
 14 attempts to elicit information concerning the race, sex, marital status, age, color, religion,
 15 disability, or national origin of a prospective employee;

16 2. To make or keep a record of that information or to disclose the information; or

17 3. To make or use a written or oral inquiry or form of application that expresses a
 18 preference, limitation or specification based on race, color, religion, sex, marital status,
 19 national origin, disability, or age between forty and seventy of a prospective employee.

20 § 2.1-724. Exceptions.—A. The following are not considered unlawful discriminatory
 21 practices under this article:

22 1. Religious preference by religious organizations - For a religious corporation,
 23 association, educational institution, or society to limit employment or give preference to
 24 members of the same religion when the choice of employees bears a rational relationship
 25 to the promotion of the religious principles for which such organization is established and
 26 maintained.

27 2. Employment of family - The employment or refusal of employment of an individual
 28 related by blood, marriage, or adoption .

29 3. Bona fide occupational qualification - For an employer to employ an employee, for
 30 an employment agency to classify or refer for employment an individual, for a labor
 31 organization to classify its membership or to classify or refer for employment an
 32 individual, or for an employer, labor organization, or joint labor-management committee
 33 controlling an apprenticeship or other training or retraining program to admit or employ
 34 an individual in the program on the basis of religion, sex, or age between forty and
 35 seventy if religion, sex, or age is a bona fide occupational qualification reasonably
 36 necessary to the normal operation of the business or enterprise.

37 4. Disability - For an employer to refuse to hire or promote, or to discipline, transfer,
 38 discharge or take any other personnel action pertaining to an employee or applicant who,
 39 because of his disability, is unable to perform his duties or cannot perform such duties in
 40 a manner which would not endanger his health or safety or the health or safety of others,
 41 nor shall an employer be subject to legal liability under this act for such refusal or
 42 personnel action.

43 5. Religious practices - For an employer to fail to employ, to discharge, or to take
 44 other personnel action when an employer demonstrates that he is unable to reasonably
 45 accommodate an employee's or prospective employee's religious observance or practice
 46 without undue hardship on the conduct of the employer's business.

47 6. Bona fide seniority system - For an employer, labor organization, or joint
 48 labor-management committee to apply different standards of compensation, or different
 49 terms, conditions, or privileges of employment pursuant to a bona fide seniority system,
 50 provided that such differences are not the result of discrimination because of race, color,
 51 religion, sex, marital status, national origin, disability, or age between forty and seventy,
 52 including involuntary retirement because of age between forty and seventy.

53 7. Veterans - For an employer, employment agency, labor organization, or joint
 54 labor-management committee to give effect to any special rights or preferences for

1 veterans created by any federal, state, or local law.

2 8. Employee benefit plans - For an employer, employment agency, labor organization,
3 or joint labor-management committee to take account of an individual's age pursuant to a
4 bona fide employee benefit plan, such as a retirement, pension, or insurance plan,
5 provided that such plan is not a subterfuge to discriminate on the basis of age and that
6 such plan does not require or permit the refusal to hire any individual, or the involuntary
7 retirement of any individual, because of age.

8 9. Promotion of minority employment - For an employer, employment agency, union, or
9 joint labor-management committee to carry out a plan approved by the Commission to
10 increase the employment of members of a minority group, as such group is defined by the
11 Commission, which has a local or state unemployment rate that is disproportionately high
12 in comparison to the local or state unemployment rate for the general population.

13 10. Testing - For an employer to give and to act upon the results of any professionally
14 developed ability test, provided that such test, its administration or action upon the
15 results is not designed, intended or used to discriminate because of race, color, religion,
16 sex, national origin, disability, age or marital status.

17 B. An employer shall make reasonable accommodation to the known physical and
18 mental impairments of an otherwise qualified person with a disability, if necessary to
19 assist such person in performing a particular job, unless the employer can demonstrate
20 that the accommodation would constitute an undue burden upon the employer.

21 1. In determining whether an accommodation would constitute an undue burden upon
22 the employer, the following shall be considered:

23 a. Hardship on the conduct of the employer's business, considering the nature of the
24 employer's operation, including composition and structure of the employer's work force;

25 b. Size of the facility where employment occurs;

26 c. The nature and cost of the accommodations needed, taking into account alternate
27 sources of funding or technical assistance included under §§ 51.01-18 and 51.01-26;

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

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

32 2. Notwithstanding the foregoing, any accommodation which would exceed \$500 in cost
33 shall be rebuttably presumed to impose an undue burden upon any employer with fewer
34 than 50 employees.

35 3. The employer has the right to choose among equally effective accommodations.

36 4. Nothing in this section shall require accommodations when the authority to make
37 such accommodations is precluded under the terms of a lease or otherwise prohibited by
38 statute, ordinance or other regulation.

39 5. Building modifications made for the purposes of such reasonable accommodation
40 may be made without requiring the remainder of the existing building to comply with the
41 requirements of the Uniform Statewide Building Code.

42 C. No employer who has hired any person with a disability because of the
43 requirements of this article shall be liable for any alleged negligence in such hiring.

44 § 2.1-725. Preferences to correct imbalances in employment not required.—Nothing
45 contained in this article shall be interpreted to require any employer, employment agency,
46 labor organization, or joint labor-management committee to grant preferential treatment to
47 any individual or to any group because of the race, color, religion, sex, marital status,
48 national origin, disability, or age between forty and seventy, of such individual or group
49 on account of an imbalance which may exist with respect to the total number or
50 percentage of persons of any race, color, religion, sex, marital status, national origin,
51 disability, or age between forty and seventy, employed by an employer, referred or
52 classified for employment by any employment agency or labor organization, or admitted
53 to, or employed in, any apprenticeship or other training program, in comparison with the
54 total number or percentage of persons of such race, color, religion, sex, marital status,

1 national origin, disability, or age between forty and seventy, in any community, section, or
 2 other area, or in the available work force in any community, section, or other area.

3 Article 3.

4 Discrimination in Public Accommodations.

5 § 2.1-726. Definitions.—As used in this article, “place of public accommodations”
 6 includes:

7 1. Any place, store or other establishment, either licensed or unlicensed, which supplies
 8 goods, services, facilities, privileges, advantages or accommodations to the general public,
 9 or which solicits or accepts the patronage or trade of the general public, or which is
 10 supported directly or indirectly by government funds;

11 2. By way of example, but not of limitation, any place where charges are made for
 12 admission or use of any property or facilities, whether conducted for the entertainment,
 13 housing or lodging of transient guests, or for the benefit, use or accommodation of those
 14 seeking health, recreation or rest, or for the burial or other disposition of human remains,
 15 or for the sale of goods, merchandise, services, or personal property, or for the rendering
 16 of personal services, or for public conveyance or transportation on land, water, or in the
 17 air, including the stations and terminals thereof and the garaging of vehicles, or where
 18 food or beverages of any kind are offered with or without charge, or where medical
 19 service or care is made available, or where the public gathers for amusement, recreation,
 20 or public purposes, or any public library, or children’s camps.

21 § 2.1-727. Exceptions.—A. As used in this article, “public accommodations” does not
 22 apply to any private club or other establishment not in fact open to the public, whose
 23 policies are determined solely by its members, though where the facilities of such
 24 establishments are made available to the public, such facilities shall be covered by this
 25 chapter.

26 B. Notwithstanding any other provisions of this article, it is not unlawful
 27 discriminatory practice for:

28 1. Any facility which is uniquely private and personal in nature to require separation
 29 by sex. Such facilities include, but are not limited to restrooms, shower rooms, and bath
 30 houses, and YMCA, YWCA, and similar dormitory lodging facilities;

31 2. Any columbarium, mausoleum, or cemetery operated, supervised, controlled or
 32 maintained by a religious institution or organization to give preference to applicants of
 33 the same religion.

34 C. Nothing in this article shall be construed to require retrofitting of any public transit
 35 equipment or to require the retrofitting, renovation, or alteration of buildings or places to
 36 a degree more stringent than that required by the applicable building code in effect at the
 37 time the building permit for such building or place is issued.

38 § 2.1-728. Unlawful discriminatory practices in public accommodations.—It shall be an
 39 unlawful discriminatory practice to do any of the following acts on the basis of race,
 40 color, religion, national origin, sex, age, marital status or disability of any individual:

41 1. To deny, directly or indirectly, any person the full and equal enjoyment of the
 42 goods, services, facilities, privileges, advantages, and accommodations of any place of
 43 public accommodations;

44 2. To print, circulate, post, or mail, or otherwise cause, directly or indirectly, to be
 45 published a statement, catalogue advertisement, or sign which indicates that the full and
 46 equal enjoyment of the goods, services, facilities, privileges, advantages, and
 47 accommodations of a place of public accommodation will be refused, withheld from or
 48 denied an individual, or that an individual’s patronage of, or presence at, a place of
 49 public accommodation is objectionable, unwelcome, unacceptable, or undesirable.

50 § 2.1-729. Blind or deaf persons accompanied by guide dogs or hearing dogs.—Every
 51 totally or partially blind person shall have the right to be accompanied by a dog, in
 52 harness, trained as a guide dog, and every deaf or hearing-impaired person shall have the
 53 right to be accompanied by a dog trained as a hearing dog on a blaze orange leash in
 54 any place of public accommodation without being required to pay an extra charge for the

1 dog; provided, that such person shall be liable for any damage done to the premises or
2 facilities by such dog. As used in this chapter, "hearing dog" means a dog trained to alert
3 its owner by touch to sounds of danger and sounds to which the owner should respond.

4 § 2.1-730. Providing access to public transportation.—Each town, city or county,
5 individually or through transportation district commissions, shall ensure that persons with
6 disabilities have access to the public transportation within its jurisdiction by either (i) use
7 of the same transportation facilities or carriers available to the general public or (ii)
8 provision of paratransit or special transportation services for persons with disabilities or
9 (iii) both. All persons with disabilities in the jurisdiction's service area who, by reason of
10 their disabilities, are unable to use the service for the general public shall be eligible to
11 use such paratransit or special transportation service. No fee which exceeds the fee
12 charged to the general public shall be charged a person with a disability for the use of
13 the same transportation facilities or carriers available to the general public. Paratransit or
14 special transportation service for persons with disabilities may charge fees to such persons
15 comparable to the fees charged to the general public for similar service in the jurisdiction
16 service area, taking into account especially the type, length and time of trip. Any variance
17 between special service and regular service fares shall be justifiable in terms of actual
18 differences between the two kinds of service provided.

19 Article 4.

20 Educational Institutions.

21 § 2.1-731. Definition.—As used in this article, "educational institution" means any public
22 institution, or any private institution which is a recipient of state funds, and includes by
23 way of illustration an academy, college, elementary or secondary school, extension course,
24 kindergarten, nursery, day care center, school system, or university and any business,
25 nursing, professional, secretarial, technical, or vocational school, and includes an agent of
26 an educational institution; provided, that the provisions of this article pertaining to
27 discrimination on the basis of disability shall not apply to any public or private
28 educational institution which is subject to the requirements of § 22.1-215.

29 § 2.1-732. Unlawful discriminatory practices in educational institutions.—A. It shall be
30 an unlawful discriminatory practice:

31 1. To deny admission to the institution, or full and equal access to its educational or
32 extracurricular programs, to an otherwise qualified person on the basis of race, color,
33 religion, national origin, sex, age, marital status or disability;

34 2. To print or publish or cause to be printed or published a catalogue or other notice
35 of advertisement indicating a preference, limitation, specification, or discrimination based
36 on race, color, religion, national origin, sex, age, marital status or disability.

37 B. Notwithstanding any other provisions of this article, it is not an unlawful
38 discriminatory practice for:

39 1. A religious educational institution or an educational institution operated, supervised,
40 or controlled by a religious institution or organization to limit admission or give
41 preference to applicants of the same religion;

42 2. An educational institution to adopt and carry out a plan to eliminate or reduce
43 imbalance with respect to race, color, religion, national origin, age, sex, marital status or
44 disability if the plan has been filed with the Commission under regulations of the
45 Commission and the Commission has not disapproved the plan;

46 3. An educational institution which traditionally and continually from its establishment
47 has had a policy of admitting only students of one sex to continue such admissions policy.

48 Article 5.

49 Housing.

50 § 2.1-733. Definitions.—For purposes of this article, unless the context clearly indicates
51 otherwise:

52 "Financial institution" means any bank, banking organization, savings and loan
53 institution, credit union, mortgage company, insurance company, or other person regularly
54 engaged in the business of making mortgage loans or other loans and to whom

1 application is made for financial assistance for the purchase, lease, acquisition,
2 construction, rehabilitation, repair, maintenance, or improvement of real estate, or an
3 individual employed by or acting on behalf of any of these.

4 "Dwelling" means any building, structure, or portion thereof which is occupied as, or
5 designed or intended for occupancy as a residence by one or more families, and any
6 vacant land which is offered for sale or lease for the construction or location thereon of
7 any such building, structure, or portion thereof.

8 "Person in the business of real estate" shall mean any person, or any agent or
9 employee of such person, who:

10 1. Is a real estate broker, real estate sales person, or rental location agent as
11 respectively defined in §§ 54-730, 54-731, and 54-731.1 of the Code of Virginia; or

12 2. Lists, advertises or otherwise promotes the sale, purchase, exchange, rental, lease or
13 improvement of real estate through its listing in a publication issued primarily for such
14 purpose; or

15 3. Negotiates or attempts to negotiate real estate mortgages or other encumbrances
16 upon a transfer of real estate on behalf of others; or

17 4. Advertises himself as engaged in any of these activities.

18 "Restrictive covenant" means any specification limiting the transfer, rental, or lease of
19 any dwelling because of race, color, religion, national origin, sex, age, parenthood or
20 disability.

21 § 2.1-734. Unlawful housing practices; notice of violation to be given to licensing
22 agency.—A. It is an unlawful discriminatory housing practice for a person in the business
23 of real estate, acting on the basis of race, color, religion, national origin, sex, age,
24 parenthood or disability:

25 1. To refuse to sell or rent after the making of a bona fide offer, or to refuse to
26 negotiate for the sale, or rental of, or otherwise make unavailable or deny, a dwelling;

27 2. To discriminate against any person in the terms, conditions, or privileges of the sale
28 or rental of a dwelling, or in the provision of facilities or services in connection therewith;

29 3. To represent to any person, for reasons of discrimination, that any dwelling is not
30 available for inspection, sale, or rental when in fact it is so available

31 4. To make, print or publish, or cause to be made, printed or published any notice,
32 statement or advertisement, with respect to the sale or rental of a dwelling that indicates
33 any preference, limitation or discrimination, or an intention to make any such preference,
34 limitation or discrimination.

35 5. To deny any person access or membership or participation in any multiple listing
36 service, real estate brokers' organization or other service, organization or facility relating
37 to the business of selling or renting real property, or to discriminate against him or her in
38 the terms or conditions of such access, membership, or participation;

39 6. To include in any transfer, sale, rental or lease of real property any restrictive
40 covenant that discriminates, or for any person to honor or exercise, or attempt to honor
41 or exercise, any discriminatory covenant pertaining to real property;

42 7. To refuse to consider both applicants' income when both parties seek to buy or
43 lease any real property;

44 8. To require, because a blind or hearing-impaired person has a guide or hearing dog,
45 an extra charge in a lease, rental agreement, or contract of purchase or sale, other than
46 for the actual damage done to the premises by the dog.

47 9. To refuse to sell or rent a dwelling to any person with a disability who utilizes
48 personal-care attendant services, based on the utilization of such services. This provision
49 does not exempt the person from normal charges associated with the sale or rental of a
50 dwelling.

51 B. It shall further be an unlawful discriminatory housing practice for any person, firm,
52 corporation, or association:

53 1. Acting for monetary gain, knowingly to induce or attempt to induce another person
54 to transfer an interest in real property, or to discourage another person from purchasing

1 real property, by representations regarding the existing or potential proximity of real
 2 property owned, used, or occupied by persons of any particular race, color, religion,
 3 national origin, sex, age, or disability.

4 2. To solicit or attempt to solicit the listing of dwellings for sale or lease, by
 5 door-to-door solicitation, in person or by telephone, or by mass distribution of circulars, for
 6 the purpose of changing the racial composition of the neighborhood.

7 B. C. If any person operating under a real estate license issued by the Commonwealth
 8 pursuant to the provisions of Chapter 18 (§ 54-730 et seq.) of Title 54 of this Code is
 9 found by the Commission to have violated any provision of this article, the Commission
 10 shall so certify to the Virginia Real Estate Board. The Real Estate Board, after written
 11 notification to the licensee, shall initiate an administrative hearing to determine whether
 12 or not to revoke, suspend, or fail to renew the license or licenses in question. This
 13 provision shall not be construed to relieve the Commission of its duty or authority to
 14 secure all possible relief for any victim of discriminatory practices.

15 § 2.1-735. Exemptions from housing provisions.—A. The provisions of § 2.1-734 shall not
 16 apply to:

17 1. Any single-family home sold or rented by its owner so long as all of the following
 18 criteria are met:

19 a. Such private individual owner does not own more than three such single-family
 20 homes at the time of the sale;

21 b. In the case of the sale of any such single-family home by a private individual owner
 22 not residing in such home at the time of such sale or who was not the most recent
 23 resident of the home prior to such sale, the exemption granted shall apply only to one
 24 such sale within any twenty-four-month period;

25 c. Such bona fide private individual owner does not own any interest in, nor is there
 26 owned or reserved on his behalf, under any express or voluntary agreement, title to or
 27 any right to all or a portion of the proceeds from the sale or rental of, more than three
 28 such single-family houses at any one time.

29 d. The home is sold or granted without the use in any manner of the sales or rental
 30 facilities or services person in the business of real estate. Nothing in this proviso shall
 31 prohibit the use of attorneys, escrow agents, abstractors, title companies and other such
 32 professional assistance as necessary to perfect or transfer the title; and

33 e. The home is sold without the publication, posting or mailing, after notice, of any
 34 advertisement or written notice in violation of this article.

35 2. Rooms or units in dwellings containing living quarters occupied or intended to be
 36 occupied by no more than four families living independently of each other, provided that
 37 the owner actually maintains and occupies one of such living quarters as his or her
 38 residence.

39 B. The provisions of § 2.1-734 shall not prohibit:

40 1. A religious organization, association, or society, or any non-profit organization or
 41 institution operated, supervised or controlled by or in conjunction with a religious
 42 corporation, association, or society, from limiting, or giving preferences in, the sale, rental,
 43 or occupancy of dwellings which it owns or operates for other than a commercial purpose
 44 to individuals of the same religion, unless membership in such religion is restricted on
 45 account of race, color, national origin, sex, age, parenthood, or disability.

46 2. A private club, not in fact open to the public, whose policies are determined solely
 47 by its members, from limiting the rental or occupancy of lodgings owned and operated by
 48 the club to its members or from giving preference to its members; provided, that the club
 49 owns and operates the lodging for other than a commercial purpose and provides such
 50 lodgings as an incident to its primary purpose or purposes;

51 3. Any private, state-owned or state-supported educational institution, hospital, nursing
 52 home, religious or correctional institution, from requiring that persons of both sexes not
 53 occupy any single-family residence, or room or unit in dwellings or other buildings, or
 54 share restrooms in said room or unit in dwellings or other buildings, which it owns or

1 operates;

2 C. It shall not be an unlawful discriminatory housing practice to operate an all-adult
3 or all-elderly housing community, or to maintain all-adult or all-elderly sections of a
4 housing community.

5 D. Nothing in § 2.1-734 shall be construed to require any person selling, renting,
6 leasing, or providing for compensation real property to modify such property or provide a
7 higher degree of care, for a person having a disability than for a person who does not
8 have a disability, except as provided in § 36-99.5 of this Code, nor shall such person be
9 required to sell, rent, lease or provide for compensation such property to any person who
10 would constitute a direct threat to the property or safety of other.

11 § 2.1-736. Restrictive covenants.—A. Any restrictive covenant purporting to restrict
12 occupancy or ownership of real property on the basis of race, color, religion, national
13 origin, sex, age, or disability, whether heretofore or hereafter included in an instrument
14 affecting the title to real or leasehold property, is declared to be of no effect, and contrary
15 to the public policy of the Commonwealth.

16 B. Any person who is asked to accept a document affecting title to real or leasehold
17 property may decline to accept the same if it includes such a covenant until the covenant
18 has been removed from the document. Refusal to accept delivery of an instrument for this
19 reason shall not be deemed a breach of a contract to purchase, lease, mortgage or
20 otherwise deal with such property.

21 C. Notwithstanding any restrictive covenant executed after July 1, 1987, which restricts
22 occupancy or ownership of real or leasehold property to members of a single family or to
23 residential use or structure, a family care home, foster home or group home in which no
24 more than six physically handicapped, mentally ill, mentally retarded or developmentally
25 disabled persons reside, with one or more resident counselors or other staff persons, shall
26 be considered for all purposes residential occupancy by a single family. Nothing in this
27 section C shall restrict or otherwise affect the authority of any county, city or town under
28 Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia or under any other
29 general or special act dealing with zoning, planning or land use.

30 § 2.1-737. Unlawful practices by financial institutions; notice of violation to be given to
31 State Corporation Commission; exemptions.—A. It shall be unlawful for any financial
32 institution or other person regularly engaged in the business of making mortgages or other
33 loans for the purchase, construction, improvement, or repair or maintenance of dwellings
34 to deny such a loan to a person applying therefor, or discriminate against him or her in
35 the fixing of the down payment, interest rate, duration, or other terms or conditions of
36 such a loan, because of the race, color, religion, national origin, sex, age, or disability of
37 such person, or of any member, stockholder, director, officer, or employee of such person,
38 or of the prospective occupants, lessees, or tenants of the dwelling or dwellings for which
39 the application for a loan is made.

40 B. Where a financial institution has failed to comply with an order issued by the
41 Commission or has been found to have committed a discriminatory practice in violation of
42 this section, the Commission shall notify in writing the State Corporation Commission of
43 the Commonwealth of Virginia of such violation or failure to comply. This provision shall
44 not be construed to relieve the Commission on Human Rights of its duty or authority to
45 secure all possible relief for any victim of discriminatory practices.

46 C. It shall be unlawful for any state, county, city, or municipal treasurer or
47 governmental official whose responsibility it is to account for, to invest, or manage public
48 funds to deposit or cause to be deposited any public funds in any lending institution
49 provided for herein which is found to be committing discriminatory practices. Upon the
50 enforcement by the court of any order to restrain a practice of such lending institution or
51 for said institution to cease or desist in a discriminatory practice, the appropriate fiscal
52 officer or treasurer of the Commonwealth or any political subdivision thereof which has
53 funds deposited in any lending institution which is practicing discrimination, as set forth
54 herein, shall take immediate steps to have the said funds withdrawn and redeposited in

1 another lending institution. If for reasons of sound economic management this action will
 2 result in a financial loss to the Commonwealth or any of its political subdivisions, the
 3 action may be deferred for a period not longer than one year. If the lending institution in
 4 question has corrected its discriminatory practices any prohibition set forth in this section
 5 shall not be applicable.

6 Article 6.

7 Commission on Human Rights.

8 § 2.1-738. Commission created; chairman; terms; quorum; and compensation.—A. There
 9 is hereby created in the Office of the Governor the Commission on Human Rights,
 10 hereafter referred to as the Commission. The Commission shall consist of nine members,
 11 no more than five of whom shall be from the same political party. The members shall be
 12 appointed by the Governor, subject to confirmation by the General Assembly as provided
 13 in § 2.1-41.2. The members appointed by the Governor shall, as much as possible, be
 14 diverse with respect to economic status, race, sex, color, ethnicity, age, disabilities, and
 15 marital status. The Commission shall include at least one person who is in the business of
 16 real estate as defined in § 2.1-734 and one person who is an employer as defined in §
 17 2.1-718.

18 B. The Governor shall designate one of the Commissioners to be Chairperson. The
 19 Chairperson shall preside at all the meetings of the Commission and there perform all the
 20 duties and functions of the Chairperson. The Commission by majority vote shall elect one
 21 of its members as Vice-Chairperson who, in the absence of the Chairperson, shall perform
 22 all the duties and functions of the Chairperson.

23 C. Of the members first appointed, four shall be appointed to two-year terms, and five
 24 shall be appointed to four-year terms. Thereafter members shall be appointed to four-year
 25 terms, except members appointed to fill vacancies shall be appointed for the remainder of
 26 the unexpired term.

27 D. In the case of vacancies on the Commission during a recess of the General
 28 Assembly, the Governor shall make an appointment to fill the vacancy, and the appointee
 29 shall hold office until thirty days after the commencement of the next session of the
 30 General Assembly and, if confirmed by the General Assembly, for the remainder of the
 31 unexpired term.

32 E. A simple majority of the members serving on the Commission shall constitute a
 33 quorum. Vacancies in the Commission shall not impair the authority of remaining
 34 members to exercise all the powers of the Commission.

35 F. Members of the Commission shall be reimbursed for actual expenses incurred by
 36 them in the performance of their duties and shall receive compensation of fifty dollars for
 37 each day or part of day of service in an official capacity, pursuant to § 2.1-20.3.

38 § 2.1-739. Human Rights Director.—A. There is established under the Commission the
 39 position of Human Rights Director, hereafter referred to as the Director. The Director shall
 40 be appointed by and serve at the pleasure of the Governor.

41 B. The Director shall be responsible for carrying out the policies of the Commission,
 42 including but not limited to:

- 43 1. Investigating unlawful discriminatory practices under this chapter;
- 44 2. Filing complaints with the Commission when he or she has reasonable cause to
 45 believe that a violation of this chapter has occurred;
- 46 3. Conciliating any complaint of unlawful discrimination under this article where there
 47 is probable cause to believe such discrimination has occurred;
- 48 4. Any other duty assigned to him or her by this article.

49 § 2.1-740. Powers and duties of Commission.—In addition to the other powers and
 50 duties prescribed in this chapter, the Commission has the following powers:

- 51 1. To meet and function at any place in the Commonwealth;
- 52 2. To establish and maintain an office;
- 53 3. To select, and fix the compensation of, such technical advisors and employees as it
 54 may deem necessary, or to authorize such action by the Director. The Attorney General

1 shall conduct all litigation to which the Commission is a party in the courts of Virginia
2 subject to the provisions of this chapter, except as provided in § 2.1-752.

3 4. To appoint and compensate hearing officers, experienced in human rights law, from
4 the list of hearing officers maintained by the Executive Secretary of the Supreme Court of
5 Virginia;

6 5. To promote creation of local commissions to aid in effectuating the policies of this
7 chapter and to enter into cooperative worksharing or other agreements with local
8 commissions, including the deferral of complaints of discrimination to local commissions;

9 6. To adopt, promulgate, amend and rescind rules and regulations consistent with this
10 chapter pursuant to the Virginia Administrative Process Act;

11 7. To receive, investigate, seek to conciliate, hold hearings pursuant to the Virginia
12 Administrative Process Act, and make findings and recommendations upon complaints
13 alleging violations of this chapter;

14 8. To make studies and appoint advisory councils appropriate to effectuate the
15 purposes and policies of the chapter and to make the results thereof available to the
16 public;

17 9. To accept public grants or private gifts, bequests, or other payments, as appropriate;

18 10. To render at least annually a comprehensive written report to the Governor and to
19 the General Assembly;

20 11. To intervene in a civil action brought under this chapter or under other applicable
21 civil rights laws against a respondent other than a state agency or department or a
22 political subdivision of the Commonwealth;

23 12. To furnish technical assistance upon request by persons subject to this chapter to
24 further compliance with the chapter or an order issued thereunder;

25 13. To inquire into incidents of and conditions which may lead to tensions between
26 racial, ethnic, or religious groups, and to take such action within the Commission's
27 authority as may be designed to alleviate such tensions, conflicts, and conditions;

28 14. To create an official seal that shall be judicially noticed;

29 15. To convene informational and investigatory public hearings.

30 § 2.1-741. Compulsory process.—A. The Commission may issue a subpoena (i) at the
31 request of the Director to facilitate its investigation; or (ii) at the request of a party to a
32 proceeding which is the subject of a complaint pending before the Commission.

33 B. The form of the subpoena shall be prescribed by the Commission in its rules and
34 regulations. A subpoena may compel the attendance of a witness, or require the
35 production for examination of any relevant books, records, or documents or both.

36 C. Within five days after service of a subpoena, on motion and for good cause shown,
37 the Commission may revoke or modify a subpoena duces tecum. The reasonable cost of
38 producing any item specified in the subpoena duces tecum shall, upon request, be paid by
39 the party requesting the subpoena, or by the Commission in the event the Director
40 requested the subpoena.

41 D. When anyone willfully fails or refuses to obey a subpoena or subpoena duces
42 tecum, the Commission shall apply for enforcement to the circuit court in the county or
43 city in which the person subject to subpoena resides or has his or her principal place of
44 business. The Commission shall cause to be served on the person notice of the time and
45 place the petition will be heard not less than five days prior to the hearing. Following a
46 hearing on the petition, the court shall have jurisdiction to enforce subpoenas issued
47 pursuant to this section. The hearing on such petition shall be given precedence over all
48 cases which are not otherwise given precedence by law.

49 E. If any witness is for reasonable cause unable to testify or aid in an investigation,
50 his or her testimony may be taken pursuant to the procedures provided in Part IV of the
51 Rules of the Supreme Court of Virginia. Witnesses subject to subpoena or deposition shall
52 be paid the same fees and mileage expenses as are paid witnesses in the circuit courts of
53 Virginia for like services.

54 § 2.1-742. Complaint; investigation.—A. A person claiming to be aggrieved by a

1 discriminatory practice, his agent, the Director, a member of the Commission, or the
2 Attorney General may file a complaint with the Commission.

3 B. The complaint shall be written and sworn or affirmed. The complaint shall set forth
4 a claim that a discriminatory practice has occurred, the facts on which the claim is based,
5 facts necessary to enable the Commission to identify the person charged, and other facts
6 as may be required by the Commission.

7 C. The complaint shall be filed (i) within 180 days of when the alleged discriminatory
8 practice occurred or (ii) within 180 days of the day upon which the complainant learned
9 that the practice allegedly had occurred, but in no event more than eighteen months from
10 the day upon which the alleged discriminatory practice occurred.

11 D. The Commission shall furnish a copy of the complaint to the respondent. After such
12 notification to the respondent, the Director shall conduct a full investigation of the
13 allegations set forth in the charge.

14 E. If the Director finds no reasonable cause to confirm that the alleged discriminatory
15 practice has occurred, the complaint shall be dismissed, with notice to all parties. The
16 complainant shall be notified that he or she may seek review by the Commission.

17 F. The Commission shall have jurisdiction to review dismissals for lack of reasonable
18 cause, and shall establish a panel of three members to hear such petitions. No panelist
19 shall be eligible to participate in further proceedings of a case in which the panel has
20 reversed a finding of no-probable-cause. Petitions will be submitted pursuant to regulations
21 established by the Commission. The Commission shall retain a record of the findings of
22 fact and conclusions of law made in the course of such review and may authorize a
23 hearing into the factual basis of the matter at issue. If it is determined within thirty days
24 after the petition for review of a dismissal of a complaint is filed that there is no
25 reasonable cause to believe the respondent has engaged in a discriminatory practice, the
26 Commission shall issue an order dismissing the complaint and furnish a copy of the order
27 to all parties and to such other public officers and persons as the Commission deems
28 proper.

29 § 2.1-743. Elimination of discriminatory practice by agreement.—A. Unless the
30 Commission has issued an order dismissing the complaint, the Director, a member of the
31 Commission, or a person designated by the Director or a Commission member may
32 endeavor to eliminate the alleged discriminatory practice by conference, conciliation, and
33 persuasion.

34 B. The terms of an agreement with the respondent may require that the respondent (i)
35 refrain in the future from discriminatory practices identified in the agreement; (ii) take
36 affirmative action as is necessary in the judgment of the Director or the Commission to
37 carry out the purposes of this chapter; and (iii) consent to the entry in court of a consent
38 decree embodying the terms of the agreement.

39 C. If an agreement with the respondent is entered into, the Commission shall issue an
40 order stating the terms of the agreement, and furnish a copy of the order to the parties
41 and such other public officers and persons as the Commission deems proper. Except for
42 the terms of the agreement, no information concerning efforts to eliminate a particular
43 discriminatory practice shall be disclosed, unless the respondent and complainant agree
44 thereto in writing.

45 D. Nothing in this chapter shall prohibit the Director or a member of the Commission
46 from continuing his or her efforts to reach conciliatory agreements at any time.

47 § 2.1-744. Intermediate relief.—After a complaint is filed, the Commission may petition
48 for temporary relief against the respondent in a court of competent jurisdiction, subject to
49 the venue requirements of § 8.01-261 of this Code, including an order or decree restraining
50 him or her from doing or procuring any act tending to render ineffectual any order the
51 Commission may enter with respect to the complaint, and including an order enjoining the
52 sale of real property by the respondent. The court shall have power to grant such relief as
53 it deems just and proper, with or without the posting of a bond or similar assurance, but
54 no such order or relief extending beyond five days shall be granted except by consent of

1 *the respondent or when the court finds that there is substantial evidence to demonstrate*
 2 *that the respondent has engaged in unlawful discrimination.*

3 § 2.1-745. *Hearing.—A. Unless the Commission has issued an order dismissing the*
 4 *complaint or stating the terms of a conciliation agreement, notice of a hearing before a*
 5 *hearing officer of the Commission shall be served on the respondent within 180 days of*
 6 *the filing of the complaint, or within thirty days of the filing of a request for review*
 7 *under § 2.1-742. Notice shall be by registered or certified mail, return receipt requested,*
 8 *and shall state: (i) the time, place, and nature of the hearing; (ii) the basic law or laws*
 9 *under which the Commission contemplates its possible exercise of authority; and (iii) the*
 10 *complaint as it may have been amended. A copy of the notice shall be furnished to the*
 11 *complainant and such other public officers and persons as the Commission deems proper.*

12 *B. A member of the Commission or staff who filed the complaint or endeavored to*
 13 *eliminate the alleged discriminatory practice by conference, conciliation, or persuasion,*
 14 *shall not be eligible to serve as a hearing examiner of those factual allegations.*

15 *C. The respondent may file an answer with the Commission in person or by registered*
 16 *or certified mail in accordance with the rules of the Commission. The Commission shall*
 17 *furnish a copy of the answer to the complainant, the hearing officer, and any other party*
 18 *to the proceeding. The Commission or the complainant may amend a complaint and the*
 19 *respondent may amend an answer at any time prior to the issuance of a statement of*
 20 *findings based on the complaint, but no statement of findings shall be issued unless the*
 21 *respondent has had the opportunity of a hearing on the complaint or amendment on*
 22 *which the order is based.*

23 *D. If the respondent fails to answer the complaint, the Commission or hearing officer*
 24 *may proceed on the evidence in support of the complaint.*

25 *E. The testimony taken at the hearing shall be under oath or affirmation. A transcript*
 26 *shall be made and filed in the office of the Commission. After the hearing, the Commission*
 27 *may take further evidence or hear argument, provided notice and an opportunity to be*
 28 *present are given to the complainant and respondent. The hearing shall be conducted*
 29 *subject to the provisions of the Virginia Administrative Process Act.*

30 § 2.1-746. *Findings and recommendations.—A. The hearing officer of the Commission*
 31 *shall state findings of fact in writing. The findings of the hearing officer shall be filed with*
 32 *the Commission within fourteen days of the date of completion of the hearing.*

33 *B. If the Commission or the hearing officer finds the respondent has not engaged in a*
 34 *discriminatory practice, the Commission, on its own finding or on the findings of the*
 35 *hearing officer, shall issue an order dismissing the complaint. A copy of the order shall be*
 36 *furnished to the parties, to the Attorney General, and to other public officers and persons*
 37 *the Commission deems proper to protect the interests of the respondent.*

38 *C. If the Commission or hearing officer finds reasonable cause to conclude that the*
 39 *respondent has committed an unlawful discriminatory practice, the Commission, on its*
 40 *own findings or on the recommended finding of a hearing officer, shall state its findings*
 41 *and may issue recommendations, to be served promptly on the parties, requesting the*
 42 *respondent to cease and desist from the discriminatory practice. The Commission further*
 43 *may recommend that the respondent take such affirmative action as in the judgment of*
 44 *the Commission will carry out the purposes of this chapter, including recommendations*
 45 *that the respondent:*

46 1. *Hire, reinstate, promote or upgrade the complainant, with or without back pay, and*
 47 *provide such fringe benefits as the complainant has been denied;*

48 2. *Restore or admit the complainant to membership in a labor organization, a training*
 49 *program, guidance program or other occupational training program, using the objective*
 50 *criteria for admission of persons to such programs;*

51 3. *Lease, rent or sell property at issue to the complainant;*

52 4. *Extend to the complainant the full and equal enjoyment of the goods, services,*
 53 *facilities, privileges or accommodations of the respondent;*

54 5. *Admit the complainant to a public accommodation or education institution;*

1 6. Pay to complainant actual damages for an injury or loss caused by a violation
 2 this chapter, including all or part of the costs of bringing and maintaining the acti
 3 before the Commission and reasonable attorney's fees. In no event shall a recommendati
 4 include the payment of punitive or exemplary damages;

5 7. Pay complainant profits obtained through a violation of § 2.1-734, as necessary
 6 compensate the complainant for costs directly incurred as a direct result of such violatio

7 8. Report as to the manner of compliance;

8 9. Post notices in a conspicuous place setting forth requirements for compliance wi
 9 this chapter or other information that the Commission deems necessary to explain th
 10 chapter; and

11 10. Revise personnel policies and procedures, including the undertaking of affirmati
 12 efforts.

13 D. The respondent may agree with the Commission to comply with t
 14 recommendations of the Commission and consent to entry in court of a consent decr
 15 embodying the terms of the agreement. In such case the Commission shall issue an ord
 16 stating the terms of the agreement, and furnish a copy of the order to the parties a
 17 such other public officers and persons as the Commission deems proper.

18 The respondent and complainant alternatively may at any time agree to mutual
 19 acceptable terms to resolve a complaint and submit such agreement to the Commissi
 20 for approval. In such case, the Commission shall issue an order acknowledging t
 21 voluntary agreement and stating the terms of such agreement.

22 E. In the case of a finding of probable cause that a public contractor has committ
 23 an act that is prohibited by this chapter or by the Virginia Fair Employment Contracti
 24 Act (§ 2.1-374 et seq.), including a financial institution, the Commission shall so certify
 25 the contracting agency and may recommend termination of the contract or debarment
 26 the respondent from participating in public contracts for a period not to exceed thr
 27 years, or both.

28 F. In the case of a finding of probable cause that a respondent operating by virtue
 29 a license issued by the Commonwealth, a political subdivision, or any agency thereof, h
 30 committed an unlawful discriminatory practice, the Commission shall so certify to t
 31 appropriate licensing authority and may recommend that the respondent's license
 32 suspended or revoked.

33 G. Upon receiving a certification made under paragraph E of this section,
 34 contracting agency may take appropriate action to terminate a contract or portion there
 35 previously entered into with the respondent, either absolutely or on condition that t
 36 respondent carry out a program of compliance with the provisions of this chapter.

37 H. Upon making a certification under paragraph E of this section, the Commissi
 38 may advise the Commonwealth and all political subdivisions and agencies thereof
 39 refrain from entering into further contracts, or extensions or other modifications
 40 existing contracts, with the respondent until the Commission is satisfied that t
 41 respondent will carry out policies in compliance with the provision of this chapter.

42 I. If a certification is made pursuant to paragraph F above, the licensing agency m
 43 take appropriate action to revoke or suspend the license of the respondent.

44 J. If the Commission has failed to schedule a hearing in accordance with § 2.1-745
 45 has failed to issue an order within 180 days after the complaint is filed, the complainar
 46 respondent, Attorney General, or an intervenor may petition the circuit court for an ord
 47 directing the Commission to take such action.

48 § 2.1-747. Enforcement of orders embodying terms of agreement.—A. The Commissi
 49 shall, upon notification of an alleged failure to comply with the terms of an agreeme
 50 reached under § 2.1-743 or subsection D of § 2.1-746, have authority to investiga
 51 whether the terms of the agreement are being complied with by the respondent. Upo
 52 finding that the terms of the agreement are not being complied with by the responde
 53 the Commission shall take appropriate action to ensure compliance. In the event that t
 54 Commission has reason at any time to believe that a party to an agreement has breach

1 any part of the agreement, the Commission may take appropriate action to require
2 compliance.

3 B. The Commission may obtain an order of the court for enforcement of its order, by
4 petition to the circuit court of the county or city where the alleged unlawful practice
5 occurred or in which the respondent lives or has his or her principal place of business,
6 upon showing that a petition for enforcement was served on the respondent.

7 § 2.1-748. Judicial review and relief.—A. If the Commission has found that there is
8 reasonable cause to believe that there has been a violation of this chapter, and the
9 recommendations of the Commission to resolve the discriminatory practice have not been
10 accepted, the Commission shall so advise the Attorney General. The Attorney General may,
11 in the name of the Commonwealth, bring a civil action against the respondent named in
12 the complaint in the circuit court of the county or city within which the alleged violation
13 occurred or in which the respondent lives or has his or her principal place of business.

14 B. If the complaint filed with the Commission pursuant to § 2.1-742 of this chapter is
15 dismissed by Commission, or if within 180 days after the date of filing of the complaint
16 the Commission has not reached a conciliation agreement between the complainant and
17 respondent, or if a civil action has not been filed, the Commission forthwith shall so notify
18 the complainant in writing by certified mail and in every case the Commission shall so
19 notify the complainant no later than 300 days after the filing of his or her complaint.
20 Within sixty days after the date of receipt of the notice, the complainant may bring a suit
21 in equity against the respondent in the circuit court of the county or city in which the
22 respondent lives or has his or her principal place of business to obtain any of the
23 remedies specified in subsection C of § 2.1-746, to enjoin further violations, and to recover
24 the actual damages sustained by him or her, together with the costs of the law suit,
25 including a reasonable fee for his or her attorney of record. After timely application, the
26 court may in its discretion permit the Commonwealth to intervene in any civil action filed
27 under this paragraph on certification that the case is of general public importance and if
28 the Commission has, before commencement of the civil action by the complainant, issued
29 a determination of reasonable cause to believe that the Act has been violated. No court
30 shall take jurisdiction over any claim of an unlawful practice under this chapter while a
31 claim of the same person seeking relief from the same grievance is pending before the
32 Commission. No action may be brought pursuant to this section more than one year after
33 the date of filing of the complaint to which the action relates.

34 C. The court shall assign any action brought under this article for hearing at the
35 earliest practicable date to expedite the action.

36 D. The court shall hear any action de novo and except for documents and records not
37 otherwise obtainable, no part of the record of a Commission hearing or other investigatory
38 report or other information obtained during a formal or informal Commission proceeding
39 shall be admissible in court without the agreement of both parties.

40 E. If the court finds that the respondent has engaged in an unlawful practice as
41 alleged in the complaint, the court may enjoin the respondent from engaging in the
42 unlawful practice and order such additional equitable relief as may be appropriate
43 including requirements that the respondent take any such actions as are specified in
44 subsection C of § 2.1-746 or such other equitable relief as may be authorized by law,
45 provided that no punitive or exemplary damages shall be awarded.

46 F. In the case of a public contractor who commits an act that is prohibited by this
47 chapter or by the Virginia Fair Employment Contracting Act (§ 2.1-374 et seq.), including a
48 financial institution, the court shall so certify to the contracting agency and the finding of
49 discrimination is binding on the contracting agency.

50 G. In the case of a respondent operating by virtue of a license issued by the
51 Commonwealth, a political subdivision, or any agency thereof, who commits an unlawful
52 discriminatory practice, the court shall so certify to the appropriate licensing authority
53 and the finding of discrimination is binding on the licensing agency.

54 H. Upon receiving a certification made under paragraph F of this section, a

1 contracting agency may take appropriate action to terminate a contract or portion there
2 previously entered into with the respondent, either absolutely or on condition that the
3 respondent carry out a program of compliance with the provisions of this chapter, or
4 debar the respondent from participating in public contracts for a period not to exceed
5 three years, or both.

6 I. Upon the court's making a certification under paragraph F of this section, the
7 Commission may advise the Commonwealth and all political subdivisions and agencies
8 thereof to refrain from entering into further contracts, or extensions or other modifications
9 of existing contracts, with the respondent until the Commission is satisfied that the
10 respondent will carry out policies in compliance with the provisions of this chapter.

11 J. If a certification is made pursuant to paragraph G above, the licensing agency may
12 take appropriate action to revoke or suspend the license of the respondent.

13 § 2.1-749. Records and inspection.—A. In connection with an investigation of
14 a complaint filed under this chapter, the Commission or its designated representative shall
15 have access at any reasonable time to premises, records and documents relevant to the
16 complaint and the right to examine, photograph and copy evidence.

17 B. Notwithstanding any other section of this chapter, every person subject to this
18 chapter shall: (i) make and keep such records as the Commission deems necessary to the
19 determination of whether discriminatory practices have been or are being committed; (ii)
20 preserve such records for such periods as the Commission shall prescribe; and (iii) make
21 such reports therefrom, as the Commission shall prescribe by regulation or order, or
22 reasonable, necessary, or appropriate for the enforcement of this chapter or the regulation
23 or orders thereunder.

24 C. The Commission, by regulation, shall require each person subject to this chapter
25 which controls an apprenticeship or other training program to keep all records reasonably
26 necessary to carry out the purpose of this chapter, including, but not limited to, a list of
27 applicants who wish to participate in such program, including the chronological order
28 in which such applications were received; and to furnish to the Commission upon request
29 a detailed description of the manner in which persons are selected to participate in the
30 apprenticeship or other training programs.

31 D. A person who believes that the application to him or her of a regulation or order
32 issued under paragraph B or C of this section would result in undue hardship may apply
33 to the Commission for an exemption from the application of the regulation or order. If the
34 application is denied, he or she may bring a civil action in the circuit court for the
35 county or city where the records are made or kept. If the Commission or the court finds
36 that the application of the regulation or order to the person in question would impose a
37 undue hardship, the Commission or the court may grant appropriate relief.

38 E. To avoid undue burdens on persons subject to this section, records and reports
39 required by the Commission shall conform as nearly as practicable to similar records and
40 reports required by federal law and to customary record-keeping practice.

41 F. It is unlawful for an officer or employee of the Commission to make public with
42 respect to a particular person without his or her consent information obtained by the
43 Commission pursuant to its authority under this section except as necessary to the
44 conduct of a proceeding under this chapter.

45 G. When a person fails to comply with paragraph A, B or C of this section, the
46 Commission may issue an order requiring compliance with these provisions. Upon failure
47 to comply with an order of the Commission, the circuit court of the county or city where
48 the records are made or kept may issue an order requiring compliance.

49 Article 7.

50 Other Unlawful Discriminatory Practices; Miscellaneous.

51 § 2.1-750. Unlawful acts.—A. It shall be an unlawful discriminatory practice for a
52 person to:

53 1. Aid, abet, incite, coerce, or compel, or to attempt directly or indirectly, alone or in
54 concert with others, to commit any act declared by this chapter to be an unlawful

1 *practice;*

2 2. *Prevent or obstruct a person from complying with the provisions of this chapter or*
3 *any order issued pursuant to this chapter;*

4 3. *Retaliate or discriminate in any manner against a person because he or she has*
5 *opposed a practice declared unlawful by this chapter, or because he or she has made a*
6 *charge, filed a complaint, testified, assisted or participated in any manner in any*
7 *investigation, proceeding, or hearing under the chapter.*

8 B. *It is an unlawful discriminatory practice for a party to a conciliation agreement*
9 *made under this chapter to violate the terms of the agreement.*

10 C. *A person who willfully resists, prevents, impedes, or interferes with the performance*
11 *of a duty or the exercise of a power by the Commission or one of its members or*
12 *representatives, shall be guilty of a Class 2 misdemeanor.*

13 § 2.1-751. *Posting of Act.—Every person, as defined herein, employer, employment*
14 *agency, labor organization, real estate operator, real estate broker, real estate salesperson,*
15 *educational institution, and financial institution subject to this chapter, shall keep posted*
16 *in a conspicuous place or places on his or her premises a notice or notices to be prepared*
17 *or approved by the Commission, which shall set forth excerpts of this chapter and such*
18 *other relevant information which the Commission shall deem necessary to explain the*
19 *chapter.*

20 § 2.1-752. *Consultations and hearings where Attorney General may not represent*
21 *Commission.—Notwithstanding the provisions of this chapter, the Attorney General shall*
22 *not represent the Commission or the Director when the Commonwealth or one of its*
23 *agencies or departments is a respondent. In this event, the Commission will consult with*
24 *and be represented by a private attorney in appropriate legal action pursuant to this*
25 *article.*

26 § 2.1-753. *Nondiscrimination under state grants and programs.—No otherwise qualified*
27 *person with a disability shall, on the basis of disability, be excluded from participation in,*
28 *be denied the benefits of, or be subjected to discrimination under any program or activity*
29 *conducted by or on behalf of any state agency. The Board for the Rights of the Disabled*
30 *shall recommend to the Commission on Human Rights such regulations as may be*
31 *necessary to implement this section. Such regulations shall be consistent, whenever*
32 *applicable, with regulations imposed under the federal Rehabilitation Act of 1973, as*
33 *amended.*

34 Article 8.

35 Local Human Rights Commissions.

36 § 2.1-754. *Local human rights ordinances.—The governing body of any county, city, or*
37 *town may enact ordinances in accordance with this chapter, including establishment or*
38 *designation of an appropriate local human rights commission and director, in order to*
39 *effectuate within its territorial jurisdiction the policies of this chapter. The commission*
40 *shall include at least one person who is a person in the business of real estate as defined*
41 *in § 2.1-733 and one person who is an employer as defined in § 2.1-718. Any city or town*
42 *may enact such an ordinance jointly with any other city or town in the same county, or*
43 *jointly with that county. An agency established under this section has no jurisdiction over*
44 *the Commonwealth or any of its agencies or instrumentalities.*

45 § 2.1-755. *Cooperation by Commission.—The Commission may enter into written*
46 *agreements with local agencies established under § 2.1-754, and these agreements may*
47 *include provisions under which the Commission will refrain from processing a complaint in*
48 *any class of cases specified by the agreement. The Commission shall rescind a cooperative*
49 *agreement whenever it determines that the agreement no longer serves the interest of*
50 *promoting effective enforcement of this chapter.*

51 *Where local commissions are established that have been previously, or are, subsequent*
52 *to enactment of this chapter, found to be substantially equivalent to federal law as*
53 *determined by the appropriate federal agency, the local commission may qualify, or*
54 *continue to qualify, as a deferral agency for purposes of federal grants and the*

1 Commission shall in accordance with the terms of its deferral agreements defer any
 2 all such cases arising in the local jurisdiction to the local commission for processi
 3 unless the complainant specifically requests a waiver.

4 The Commission shall develop policies and procedures for a determination of whe
 5 local commissions are substantially equivalent to the state Commission and where lo
 6 commissions are so found, the Commission shall defer cases to the local commission wh
 7 arose in that locality under provisions of this chapter.

8 § 2.1-756. Powers of local commissions.—An ordinance enacted under § 2.1-754 m
 9 grant a local agency power to conduct programs and activities to carry out the pul
 10 policy of the Commonwealth as provided in § 2.1-715 of this chapter, including but
 11 limited to the power to:

12 1. Receive, initiate, investigate, conciliate, hear, and determine charges of violations
 13 ordinances, orders, or resolutions forbidding discrimination adopted by the county, city,
 14 town, except that no person who initiates a complaint may participate as a member
 15 the agency in the hearing or disposition of the complaint;

16 2. Compel the attendance of witnesses and the production of evidence before it
 17 subpoena issued by the circuit court of the county or city wherein the local commission
 18 authorized to act;

19 3. Issue remedial orders, after notice and hearing, requesting cessation of violatic
 20 and recommending such affirmative action as in its judgment will carry out the purpo.
 21 of this chapter, which may include the remedies enumerated in § 2.1-746 or other action

22 4. Issue orders setting forth the terms of agreements resolving complaints, to which
 23 respondent has agreed and consented, and to petition the circuit court of the county
 24 city to enforce the terms of such agreement;

25 5. Request the county, city or town attorney to bring a civil action in the circuit co
 26 of the county or city seeking such equitable relief as will carry out the purposes of t
 27 chapter, which may include the remedies enumerated in § 2.1-746 or other action;

28 6. Employ an executive director, attorneys, hearing examiners, clerks, and o
 29 employees and agents;

30 7. Accept grants, gifts, or bequests, public or private, to help finance its activities;

31 8. Adopt rules and regulations;

32 9. Enter into cooperative working agreements with any federal or state agency in ord
 33 to achieve the purposes of this article;

34 10. In its discretion, or upon request of the Commission, refer a matter under
 35 jurisdiction to the Commission for initial action or review;

36 11. Refer to the Commission for resolving a dispute over jurisdiction or other mati
 37 with another local commission;

38 12. Provide a copy of its annual report to the Commission.

39 A local human rights or human relations commission established prior to the effecti
 40 date of this chapter may, in addition to the foregoing powers, exercise any such additio
 41 powers as may have been granted heretofore to that commission pursuant to applical
 42 provisions of § 15.1-687.3, Article 4.1 of Title 15.1 of the Code of Virginia, or municip
 43 charter provisions.

44 § 2.1-757. Election of remedies.—Any person who files a complaint with a local agen
 45 established under § 2.1-754 may not also file a complaint with the Commission concerni
 46 any of the matters alleged in such complaint, and any person who files a complaint wi
 47 the Commission may not also file a complaint with any local agency concerning any
 48 the matters alleged in such complaint.

49 § 24.1-41.3. Discrimination against qualified persons with disabilities in exercising rig
 50 to vote prohibited.—No person with a disability who is otherwise entitled to vote under t
 51 provisions of § 24.1-41 and who is not disqualified from voting under the provisions
 52 24.1-42 shall be denied the opportunity to register or vote in this Commonwealth beca.
 53 of such disability. However, nothing in this section shall be construed to require t
 54 release of patients from any state hospital as defined in § 37.1-1 of this Code or priso

1 of any state correctional facility as defined in § 53.1-1 of this Code for purposes of
2 registering to vote or voting.

3 § 51.01-3. Definitions.—As used in this title except where the context requires a different
4 meaning or where it is otherwise provided, the following words shall have the meaning
5 ascribed to them:

6 “Board” means the Board of Rehabilitative Services.

7 “Client” means any person receiving a service provided by the personnel or facilities of
8 a public or private agency, whether referred to as a client, participant, patient, resident, or
9 other term.

10 “Commissioner” means the Commissioner of Rehabilitative Services.

11 “Mental impairment” means (i) suffering from a disability attributable to mental
12 retardation, autism, or any other neurologically handicapping condition closely related to
13 mental retardation and requiring treatment similar to that required by mentally retarded
14 individuals; or (ii) an organic or mental impairment that has substantial adverse effects on
15 an individual's cognitive or volitional functions, including central nervous system disorders
16 of significant discrepancies among mental functions of an individual. For the purposes of §
17 51.01-41, the term “mental impairment” does not include active alcoholism or current drug
18 addiction and does not include any mental impairment, disease or defect that has been
19 successfully asserted by an individual as a defense to any criminal charge.

20 “Otherwise qualified person with a disability” means a person with a disability who is:

21 1. For the purposes of § 51.01-41, qualified without accommodation to perform the
22 duties of a particular job or position; or

23 2. For the purposes of § 51.01-42, meets all the requirements for admission to an
24 educational institution or meets all the requirements for participation in its extracurricular
25 programs.

26 “Person with a disability” means any person who has a physical or mental impairment
27 which substantially limits one or more of his major life activities or has a record of such
28 impairment . and which:

29 1. For purposes of § 51.01-41 is unrelated to the individual's ability to perform the
30 duties of a particular job or position, or is unrelated to the individual's qualifications for
31 employment or promotion;

32 2. For purposes of § 51.01-42 is unrelated to the individual's ability to utilize and benefit
33 from educational opportunities, programs, and facilities at an educational institution;

34 3. For purposes of § 51.01-44 is unrelated to the individual's ability to utilize and benefit
35 from a place of public accommodation or public service;

36 4. For purposes of § 51.01-45 is unrelated to the individual's ability to acquire, rent, or
37 maintain property.

38 “Physical impairment” means any physical condition, anatomic loss, or cosmetic
39 disfigurement which is caused by bodily injury, birth defect, or illness.

40 § 51.01-37. Powers and duties.—The Department shall have the following powers and
41 duties:

42 1. To provide staff to assist in the performance of the administrative and technical
43 duties of the Board for Rights of the Disabled and to render such advice to the Board as
44 the Board may from time to time request, not inconsistent with the other duties of the
45 Department;

46 2. To make and enter into all contracts and agreements necessary or incidental to the
47 performance of its duties and the execution of its powers under this chapter, including but
48 not limited to, contracts with the United States, other states, agencies and governmental
49 subdivisions of Virginia;

50 3. To accept grants from the United States government and agencies and
51 instrumentalities thereof and any other source. To this end, the Department shall have the
52 power to comply with such conditions and execute such agreements as may be necessary,
53 convenient, or desirable;

54 4. To monitor the implementation of Chapter 9 (§ 51.01-40 et seq.) of this title and To

1 render assistance to persons with disabilities in the protection *and promotion* of the right
2 of persons with disabilities under the laws of the Commonwealth and of the United States;

3 5. - To employ mediation procedures to the maximum extent possible to resolve
4 complaints concerning violations of rights of persons with disabilities, when those rights are
5 related to such disabilities. When such procedures fail, the Department shall have the
6 authority to pursue legal, administrative, and other appropriate remedies to protect the
7 rights of persons with disabilities, when those rights are related to such disabilities;
8 however, the Department may file an action in any court only upon the express approval
9 of the Governor, whose authority to act under this provision shall not be delegated. In the
10 event there is no conflict of interest nor federal requirement to the contrary, the Governor
11 may refer such action to the office of the Attorney General;

12 [Repealed]

13 6. No counsel shall be hired by the Department under the provisions of this chapter
14 without the express approval of the Attorney General;

15 [Repealed]

16 7. To do all other acts necessary or convenient to carry out the purposes of this
17 chapter and Chapter 9 (§ 51.01-40 et seq.) of this title .

18 2. That Chapter 5 of Title 36, consisting of §§ 36-86 through 36-96, and Chapter 9 of
19 Title 51.01, consisting of §§ 51.01-40 through 51.01-46, of the Code of Virginia are repealed.

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