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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Law, Division of Human Rights
Virginia Administrative Code (VAC) Chapter citation(s)	01 VAC 45-20-
VAC Chapter title(s)	Regulations Regarding the Virginia Human Rights Act
Action title	Amendments to conform to statutory changes in the Virginia Values Act and other technical amendments
Final agency action date	June 30, 2020
Date this document prepared	June 30, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

These final exempt regulations are required by state law. In the 2020 session, the General Assembly passed Senate Bill 868 (enacted at Chapter 1140, 2020 Acts of Assembly), which amended the Virginia Human Rights Act (VHRA) by adding new protected classes, expanding what is prohibited by the VHRA, and codifying the general processes by which the Division of Human Rights receives complaints and investigates, attempts to settle, and issues final determinations regarding allegations of unlawful discriminatory practices.

Specifically, the Department of Law, Division of Human Rights is: (1) revising the following existing regulations:

- 1 VAC 45-20-20. Definitions
- 1 VAC 45-20-25. General

- 1 VAC 45-20-30. Complaints by or on behalf of persons claiming to be aggrieved
- 1 VAC 45-20-50. Contents of complaint
- 1 VAC 45-20-60. Filing referrals to state and federal agencies
- 1 VAC 45-20-70. Notice of charge of discrimination (formerly "Notice of complaint")
- 1 VAC 45-20-80. Investigations by the Director or his designee
- 1 VAC 45-20-90. Dismissal; procedure and authority
- 1 VAC 45-20-96. Conciliation (formerly "Settlement")
- 1 VAC 45-20-110. Formal hearing
- 1 VAC 45-20-120. Findings and recommendations from a formal hearing.

(2) and adopting the following new regulations:

- 1 VAC 45-20-55. Cooperative enforcement agreements with federal agencies or local commissions
- 1 VAC 45-20-75. Withdrawal of a complaint by a complainant
- 1 VAC 45-20-82. Witnesses
- 1 VAC 45-20-83. Requests for Documents
- 1 VAC 45-20-84. Fact-finding conference
- 1 VAC 45-20-85. Withdrawal of a charge
- 1 VAC 45-20-86. Negotiated settlement
- 1 VAC 45-20-87. Issuance of notice of right to sue during investigation
- 1 VAC 45-20-92. No reasonable cause determinations; procedure and authority
- 1 VAC 45-20-94. Reasonable cause determinations; procedure and authority
- 1 VAC 45-20-98. Notice of right to sue.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Pursuant to §2.2-520.A.2 of the Code of Virginia, the Division of Human Rights is charged with adopting, promulgating, amending, and rescinding regulations to assist in the prevention of and relief from unlawful discriminatory practices prohibited by the VHRA. As noted above, Senate Bill 868 (enacted in the 2020 Acts of Assembly at Chapter 1140) adds several new sections to the VHRA that expand its coverage, prohibited unlawful discriminatory practices, and the Division's duties with regard to receiving complaints and investigating charges of discrimination under the Act. In addition, the enactment clauses in Chapter 1140 repeal § 2.2-3903 of the Code of Virginia and requires that any regulations implementing the new § 2.2-3907 of the Code of Virginia, so far as practicable, conform with the practices and timelines of the U.S. Equal Employment Opportunity Commission with respect to analogous federal laws and regulations. These amendments conform the relevant regulations to the amended Code of Virginia.

This regulatory action is exempt from the regulatory process by the provisions of § 2.2-4006.A.3 and A.4.a of the Administrative Process Act because these changes consist only of changes in style or form or corrections of technical errors or are necessary to conform to the relevant regulations to the amended Code of Virginia where no agency discretion is involved.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 30, 2020, the Department of Law, Division of Human Rights reviewed and adopted the final regulation, "Chapter 20. Regulations Regarding the Virginia Human Rights Act"