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SENATE BILL NO. 1102

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws
on January 29, 2003)

(Patron Prior to Substitute—Senator Mims)

A BILL to amend and reenact §§ 36-96.1:1, 36-96.2, 36-96.8, 36-96.20, and 54.1-300, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 23.2, consisting of sections numbered 54.1-2343 and 54.1-2344, relating to the Department of Professional and Occupational Regulation; creation of Fair Housing Board.

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-96.1:1, 36-96.2, 36-96.8, 36-96.20, and 54.1-300, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 23.2, consisting of sections numbered 54.1-2343 and 54.1-2344, as follows:

§ 36-96.1:1. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Complainant" means a person, including the ~~Real Estate Board~~ *Fair Housing Board*, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the ~~Real Estate Board~~ *Fair Housing Board*.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Discriminatory housing practices" means an act that is unlawful under §§ 36-96.3, 36-96.4, 36-96.5, or § 36-96.6.

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

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means ~~one~~ *one* or more individuals who have not attained the age of ~~eighteen~~ *18* years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of ~~eighteen~~ *18* years. For purposes of this section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

"Family" includes a single individual, whether male or female.

"Handicap" means, with respect to a person, (i) a physical or mental impairment ~~which~~ *that* substantially limits ~~one~~ *one* or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of, or addiction to a controlled substance as defined in Virginia or federal law. Neither the term "individual with handicap" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite.

"Lending institution" includes any bank, savings institution, credit union, insurance company or mortgage lender.

"Person" means ~~one~~ *one* or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

"Respondent" means any person or other entity alleged to have violated the provisions of this chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined pursuant to the provisions of § 36-96.9.

"Restrictive covenant" means any specification in any instrument affecting title to real property ~~which~~ *that* purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race,

60 color, religion, national origin, sex, elderliness, familial status, or handicap.

61 "To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to
62 occupy premises not owned by the occupant.

63 § 36-96.2. Exemptions.

64 A. Except as provided in § 36-96.3 A 3, this chapter shall not apply to any single-family house sold
65 or rented by an owner, provided that such private individual does not own more than ~~three~~³
66 single-family houses at any one time. In the case of the sale of any single-family house by a private
67 individual-owner not residing in the house at the time of the sale or who was not the most recent
68 resident of the house prior to sale, the exemption granted shall apply only with respect to ~~one~~¹ such sale
69 within any ~~twenty-four~~²⁴-month period; provided that such bona fide private individual owner does not
70 own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary
71 agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than
72 ~~three~~³ such single-family houses at any one time. The sale or rental of any such single-family house
73 shall be exempt from the application of this chapter only if the house is sold or rented (i) without the
74 use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker,
75 agent, salesperson, or of the facilities or the services of any person in the business of selling or renting
76 dwellings, or of any employee, independent contractor, or agent of any broker, agent, salesperson, or
77 person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written
78 notice in violation of this chapter. However, nothing herein shall prohibit the use of attorneys, escrow
79 agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer
80 the title. This exemption shall not apply to or inure to the benefit of any licensee of the Real Estate
81 Board *or regulant of the Fair Housing Board*, regardless of whether the licensee is acting in his
82 personal or professional capacity.

83 B. Except for § 36-96.3 A 3, this chapter shall not apply to rooms or units in dwellings containing
84 living quarters occupied or intended to be occupied by no more than ~~four~~⁴ families living independently
85 of each other, if the owner actually maintains and occupies ~~one~~¹ of such living quarters as his residence.

86 C. Nothing in this chapter shall prohibit a religious organization, association or society, or any
87 nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a
88 religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings
89 ~~which~~^{that} it owns or operates for other than a commercial purpose to persons of the same religion, or
90 from giving preferences to such persons, unless membership in such religion is restricted on account of
91 race, color, national origin, sex, elderliness, familial status, or handicap. Nor shall anything in this
92 chapter apply to a private membership club not in fact open to the public, which as an incident to its
93 primary purpose or purposes provides lodging which it owns or operates for other than a commercial
94 purpose, from limiting the rental or occupancy of such lodgings to its members or from giving
95 preference to its members. Nor, where matters of personal privacy are involved, shall anything in this
96 chapter be construed to prohibit any private, state-owned or state-supported educational institution,
97 hospital, nursing home, religious or correctional institution, from requiring that persons of both sexes not
98 occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such
99 room or unit in dwellings or other buildings, which it owns or operates.

100 D. Nothing in this chapter prohibits conduct against a person because such person has been convicted
101 by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled
102 substance as defined in federal law.

103 E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to
104 persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

105 F. A rental application may require disclosure by the applicant of any criminal convictions and the
106 owner or managing agent may require as a condition of acceptance of the rental application that
107 applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the
108 rental application. The owner or managing agent may collect from the applicant moneys to reimburse
109 the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record
110 checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an
111 individual who, based on a prior record of criminal convictions involving harm to persons or property,
112 would constitute a clear and present threat to the health or safety of other individuals.

113 G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction
114 regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing
115 agents of dwellings may develop and implement reasonable occupancy and safety standards based on
116 factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so
117 long as the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits
118 the rental application or similar document from requiring information concerning the number, ages, sex
119 and familial relationship of the applicants and the dwelling's intended occupants.

120 § 36-96.8. Powers of Real Estate Board and Fair Housing Board.

121 A. The Real Estate Board ~~has~~ *and the Fair Housing Board, as provided in this chapter, have the*

power for the purposes of this chapter to initiate and receive complaints, conduct investigations of any violation of this chapter, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge and refer it to the Attorney General for action.

B. The Real Estate Board and the Fair Housing Board shall perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations.

§ 36-96.20. Additional powers of the Real Estate Board; action on real estate licenses; regulations.

A. In any case in which the *Real Estate Board* has received or initiated a complaint and conducted an investigation of any violation of this chapter and determined that there exists reasonable cause to believe that a ~~licensed broker, salesperson, or agency~~ *has real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees* have engaged in discriminatory housing practices prohibited by the Virginia Fair Housing Law (§ 36-96.1 et seq.) or the Virginia Equal Credit Opportunity Act (§ 59.1-21.19 et seq.), the Board shall immediately attempt to resolve the matter by conference and conciliation, and upon failure to resolve the matter in such manner, may initiate an administrative hearing to determine whether to revoke, suspend or fail to renew the license or licenses in question. Not less than ~~ten~~10 days prior to the initial conference hereunder, the Board shall prepare and deliver to the respondent or respondents a written report setting forth the scope, findings and conclusions of the investigation conducted under this section.

B. If any person operating under a real estate license issued by the Board, pursuant to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, is found by a court to have violated any provision of this chapter and this fact is so certified to the Board, the Board, after notification to the licensee, shall take appropriate action to consider suspension or revocation of the license of the licensee.

~~C. The Board shall perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations.~~

§ 54.1-300. (Effective July 1, 2003, until July 1, 2004) Definitions.

As used in this chapter unless the context requires a different meaning:

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation ~~which~~*that* is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, *Fair Housing Board*, and Virginia Board for Asbestos, Lead, and Home Inspectors.

§ 54.1-300. (Effective July 1, 2004) Definitions.

As used in this chapter unless the context requires a different meaning:

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a

license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation ~~which~~*that* is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists and Wetland Professionals, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, *Fair Housing Board*, and Virginia Board for Asbestos, Lead, and Home Inspectors.

CHAPTER 23.2.

FAIR HOUSING BOARD.

§ 54.1-2343. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Fair Housing Board.

"Fair Housing Law" means the provisions of Chapter 5.1 (§ 36-96.1 et seq.) of Title 36.

§ 54.1-2344. Fair Housing Board; membership; terms; chairman; powers and duties.

A. The Fair Housing Board shall be composed of 11 members, to be appointed by the Governor, as follows: 1 representative of local government, 1 architect licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of this title, 1 representative of the mortgage lending industry, 1 representative of the property and casualty insurance industry, 1 representative of the residential property management industry not licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of this title, 1 contractor licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of this title, 1 representative of the disability community, 1 representative of the residential land lease industry subject to Chapter 13.3 (§ 55-248.41 et seq.) of Title 55, and 3 citizen members selected in accordance with § 54.1-107. Initial terms of Board members shall be as follows: 4 members shall be appointed for a term of 4 years; 4 members shall be appointed for a term of 3 years, and 3 members shall be appointed for a term of 2 years. Thereafter, all terms of Board members shall be for terms of 4 years.

B. The Board shall elect a chairman from its membership.

C. The Board shall adopt a seal by which it shall authenticate its proceedings.

D. The Board shall be responsible for the administration and enforcement of the Fair Housing Law. However, the Board shall have no authority with respect to a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees who have allegedly violated, or who have in fact violated, the Fair Housing Law.

The Board shall have the power and duty to establish, by regulation, an education-based certification or registration program for persons subject to the Fair Housing Law who are involved in the business or activity of selling or renting dwellings. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.

No education-based program established by the Board shall require Board certification or registration where an individual holds a valid license issued by the Real Estate Board. Any courses approved by the Real Estate Board to meet the fair housing requirement of § 54.1-2105 and the instructors approved by the Real Estate Board to teach continuing education courses in accordance with § 54.1-2105 shall not require additional approval by the Fair Housing Board to meet any education requirements in this section and in the regulations of the Fair Housing Board.

2. That the Fair Housing Board shall promulgate regulations to implement the certification provisions of this act to be effective within 280 days of its enactment.

3. That all rules and regulations adopted by the Real Estate Board that are in effect as of the effective date of this act and that pertain to the subject of this act shall remain in full force and effect until altered, amended or rescinded by the Fair Housing Board.

4. That, to affect the purposes of this act, the Real Estate Board and the Fair Housing Board may (i) share staff and other resources, (ii) coordinate educational requirements for their respective regulants, (iii) coordinate the adoption of their respective regulations, and (iv) otherwise provide for the consistent application of the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia).

5. That the Real Estate Board shall provide funding for the operation of the Fair Housing Board until such time as the Fair Housing Board is funded through the implementation of the certification and registration requirements authorized by the provisions of this act.