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HOUSE BILL NO. 2668

Offered January 23, 2009

A BILL to amend and reenact §§ 36-96.1, 36-96.1:1, 36-96.2, 36-96.3, 36-96.4, 36-96.6, and 55-248.47 of the Code of Virginia, relating to the Fair Housing Law; discrimination based on sexual orientation.

Patron—Scott, J.M.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-96.1, 36-96.1:1, 36-96.2, 36-96.3, 36-96.4, 36-96.6, and 55-248.47 of the Code of Virginia are amended and reenacted as follows:

§ 36-96.1. Declaration of policy.

A. This chapter shall be known and referred to as the Virginia Fair Housing Law.

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, sexual orientation, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

§ 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 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 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, that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land 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 or more individuals who have not attained the age of 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 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 that substantially limits 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 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,

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59 unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

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

63 "Restrictive covenant" means any specification in any instrument affecting title to real property that
64 purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color,
65 religion, national origin, sex, elderliness, familial status, or handicap.

66 "*Sexual orientation*" means a person's actual or perceived heterosexuality, bisexuality, homosexuality,
67 or gender identity or expression. "*Sexual orientation*" does not include sexually deviant disorders
68 (*paraphilias*) as defined in the *Diagnostic and Statistic Manual of Mental Disorders (DSM-IV)*.

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

71 § 36-96.2. Exemptions.

72 A. Except as provided in subdivision A 3 of § 36-96.3 and subsections A, B, and C of § 36-96.6,
73 this chapter shall not apply to any single-family house sold or rented by an owner, provided that such
74 private individual does not own more than three single-family houses at any one time. In the case of the
75 sale of any single-family house by a private individual-owner not residing in the house at the time of
76 the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall
77 apply only with respect to one such sale within any 24-month period; provided that such bona fide
78 private individual owner does not own any interest in, nor is there owned or reserved on his behalf,
79 under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from
80 the sale or rental of, more than three such single-family houses at any one time. The sale or rental of
81 any such single-family house shall be exempt from the application of this chapter only if the house is
82 sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental
83 services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in
84 the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any
85 broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of
86 any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit
87 the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as
88 necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any
89 licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the
90 licensee is acting in his personal or professional capacity.

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

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

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

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

114 F. A rental application may require disclosure by the applicant of any criminal convictions and the
115 owner or managing agent may require as a condition of acceptance of the rental application that
116 applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the
117 rental application. The owner or managing agent may collect from the applicant moneys to reimburse
118 the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record
119 checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an
120 individual who, based on a prior record of criminal convictions involving harm to persons or property,

121 would constitute a clear and present threat to the health or safety of other individuals.
 122 G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction
 123 regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing
 124 agents of dwellings may develop and implement reasonable occupancy and safety standards based on
 125 factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so
 126 long as the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits
 127 the rental application or similar document from requiring information concerning the number, ages, sex
 128 and familial relationship of the applicants and the dwelling's intended occupants.

129 § 36-96.3. Unlawful discriminatory housing practices.

130 A. It shall be an unlawful discriminatory housing practice for any person:

131 1. To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale
 132 or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color,
 133 religion, national origin, sex, elderliness, *sexual orientation*, or familial status;

134 2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a
 135 dwelling, or in the provision of services or facilities in the connection therewith to any person because
 136 of race, color, religion, national origin, sex, elderliness, *sexual orientation*, or familial status;

137 3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or
 138 advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or
 139 discrimination or an intention to make any such preference, limitation or discrimination based on race,
 140 color, religion, national origin, sex, elderliness, familial status, *sexual orientation*, or handicap. The use
 141 of words or symbols associated with a particular religion, national origin, sex, or race shall be prima
 142 facie evidence of an illegal preference under this chapter which shall not be overcome by a general
 143 disclaimer. However, reference alone to places of worship including, but not limited to, churches,
 144 synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie
 145 evidence of an illegal preference;

146 4. To represent to any person because of race, color, religion, national origin, sex, elderliness,
 147 familial status, *sexual orientation*, or handicap that any dwelling is not available for inspection, sale, or
 148 rental when such dwelling is in fact so available;

149 5. To deny any person access to membership in or participation in any multiple listing service, real
 150 estate brokers' organization, or other service, organization or facility relating to the business of selling or
 151 renting dwellings, or to discriminate against such person in the terms or conditions of such access,
 152 membership, or participation because of race, color, religion, national origin, sex, elderliness, familial
 153 status, *sexual orientation*, or handicap;

154 6. To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that
 155 discriminates because of race, color, religion, national origin, sex, elderliness, familial status, *sexual*
 156 *orientation*, or handicap or for any person to honor or exercise, or attempt to honor or exercise any such
 157 discriminatory covenant pertaining to housing;

158 7. To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry
 159 or prospective entry into the neighborhood of a person or persons of a particular race, color, religion,
 160 national origin, sex, elderliness, familial status, *sexual orientation*, or handicap;

161 8. To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate
 162 or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter, (ii) a person
 163 residing in or intending to reside in that dwelling after it is so sold, rented or made available, or (iii)
 164 any person associated with the buyer or renter;

165 9. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a
 166 dwelling, or in the provision of services or facilities in connection therewith because of a handicap of (i)
 167 that person, (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or
 168 made available, or (iii) any person associated with that buyer or renter.

169 B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of
 170 the handicapped person, reasonable modifications of existing premises occupied or to be occupied by
 171 any person if such modifications may be necessary to afford such person full enjoyment of the premises;
 172 except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition
 173 permission for a modification on the renter's agreeing to restore the interior of the premises to the
 174 condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make
 175 reasonable accommodations in rules, practices, policies, or services when such accommodations may be
 176 necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection
 177 with the design and construction of covered multi-family dwellings for first occupancy after March 13,
 178 1991, a failure to design and construct dwellings in such a manner that:

179 1. The public use and common use areas of the dwellings are readily accessible to and usable by
 180 handicapped persons;

181 2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow

182 passage by handicapped persons in wheelchairs; and

183 3. All premises within covered multi-family dwelling units contain an accessible route into and
184 through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are
185 in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab
186 bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver
187 about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings
188 consisting of four or more units if such buildings have one or more elevators and ground floor units in
189 other buildings consisting of four or more units.

190 C. Compliance with the appropriate requirements of the American National Standards for Building
191 and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of
192 regulations promulgated by HUD providing accessibility and usability for physically handicapped people
193 shall be deemed to satisfy the requirements of subdivision B 3.

194 D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation
195 which requires dwellings to be designed and constructed in a manner that affords handicapped persons
196 greater access than is required by this chapter.

197 § 36-96.4. Discrimination in residential real estate-related transactions; unlawful practices by lenders,
198 insurers, appraisers, etc.; deposit of state funds in such institutions.

199 A. It shall be unlawful for any person or other entity, including any lending institution, whose
200 business includes engaging in residential real estate-related transactions, to discriminate against any
201 person in making available such a transaction, or in the terms or conditions of such a transaction, or in
202 the manner of providing such a transaction, because of race, color, religion, national origin, sex,
203 elderliness, familial status, *sexual orientation*, or handicap. It shall not be unlawful, however, for any
204 person or other entity whose business includes engaging in residential real estate transactions to require
205 any applicant to qualify financially for the loan or loans for which such person is making application.

206 B. As used in this section, the term "residential real estate-related transaction" means any of the
207 following:

208 1. The making or purchasing of loans or providing other financial assistance (i) for purchasing,
209 constructing, improving, repairing, or maintaining a dwelling or (ii) secured by residential real estate; or

210 2. The selling, brokering, insuring or appraising of residential real property. However, nothing in this
211 chapter shall prohibit a person engaged in the business of furnishing appraisals of real property to take
212 into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status,
213 *sexual orientation*, or handicap.

214 C. It shall be unlawful for any state, county, city, or municipal treasurer or governmental official
215 whose responsibility it is to account for, to invest, or manage public funds to deposit or cause to be
216 deposited any public funds in any lending institution provided for herein which is found to be
217 committing discriminatory practices, where such findings were upheld by any court of competent
218 jurisdiction. Upon such a court's judicial enforcement of any order to restrain a practice of such lending
219 institution or for said institution to cease or desist in a discriminatory practice, the appropriate fiscal
220 officer or treasurer of the Commonwealth or any political subdivision thereof which has funds deposited
221 in any lending institution which is practicing discrimination, as set forth herein, shall take immediate
222 steps to have the said funds withdrawn and redeposited in another lending institution. If for reasons of
223 sound economic management, this action will result in a financial loss to the Commonwealth or any of
224 its political subdivisions, the action may be deferred for a period not longer than one year. If the lending
225 institution in question has corrected its discriminatory practices, any prohibition set forth in this section
226 shall not apply.

227 § 36-96.6. Certain restrictive covenants void; instruments containing such covenants.

228 A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or
229 ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial
230 status, *sexual orientation*, or handicap, whether heretofore or hereafter included in an instrument
231 affecting the title to real or leasehold property, are declared to be void and contrary to the public policy
232 of this Commonwealth.

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

238 C. No person shall solicit or accept compensation of any kind for the release or removal of any
239 covenant or reversionary interest described in subsection A. Any person violating this subsection shall be
240 liable to any person injured thereby in an amount equal to the greater of three times the compensation
241 solicited or received, or \$500, plus reasonable attorneys' fees and costs incurred.

242 D. A family care home, foster home, or group home in which physically handicapped, mentally ill,
243 mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or

244 other staff persons, shall be considered for all purposes residential occupancy by a single family when
245 construing any restrictive covenant which purports to restrict occupancy or ownership of real or
246 leasehold property to members of a single family or to residential use or structure.

247 § 55-248.47. Sale or lease of manufactured home by owner.

248 The landlord shall not unreasonably refuse or restrict the sale or rental of a manufactured home
249 located in his manufactured home park by a tenant. The landlord shall not prohibit the manufactured
250 home owner from placing a "for sale" sign on or in his home except that the size, placement, and
251 character of all signs are subject to the rules and regulations of the park. Prior to selling or leasing the
252 manufactured home the tenant shall give notice to the landlord, including, but not limited to, the name
253 of the prospective vendee or lessee if the prospective vendee or lessee intends to occupy the
254 manufactured home in that manufactured home park. The landlord shall have the burden of proving that
255 his refusal or restriction regarding the sale or rental of a manufactured home was reasonable. The refusal
256 or restriction of the sale or rental of a manufactured home based exclusively or predominantly on the
257 age of the home shall be considered unreasonable. Any refusal or restriction because of race, color,
258 religion, national origin, familial status, elderliness, handicap, *sexual orientation*, or sex shall be
259 conclusively presumed to be unreasonable.

260 *As used in this section, "sexual orientation" means a person's actual or perceived heterosexuality,*
261 *bisexuality, homosexuality, or gender identity or expression. "Sexual orientation" does not include*
262 *sexually deviant disorders (paraphilias) as defined in the Diagnostic and Statistic Manual of Mental*
263 *Disorders (DSM-IV).*