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SENATE BILL NO. 1224

Offered January 9, 2013

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A BILL to amend and reenact §§ 36-96.1, 36-96.1:1, 36-96.2, 36-96.3, and 36-96.21 of the Code of Virginia, relating to the Virginia Fair Housing Law; unlawful discriminatory housing practices.

Patron—Locke

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-96.1, 36-96.1:1, 36-96.2, 36-96.3, and 36-96.21 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, ~~or~~ handicap, *or lawful source of funds* 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.

"Housing assistance" means a subsidy provided to defray the cost of rental housing.

"Lawful source of funds" means any income used by a person to pay for the purchase or lease of a dwelling including (i) public assistance as defined in § 63.2-100, (ii) any manner of gross income as defined by § 20-108.2, (iii) federal supplemental security income benefits, (iv) child support, and (v) any federal, state, or local housing assistance, regardless of whether the funds are paid directly to the

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59 *person or to a landlord or other third party for the benefit of the person.*

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

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

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

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

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

74 **§ 36-96.2. Exemptions.**

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

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

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

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

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

117 F. A rental application may require disclosure by the applicant of any criminal convictions and the
118 owner or managing agent may require as a condition of acceptance of the rental application that
119 applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the
120 rental application. The owner or managing agent may collect from the applicant moneys to reimburse

the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.

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

H. *It shall not be a violation of this chapter if the housing assistance on which the transaction is dependent is not authorized for the transaction within 14 days of the date of the landlord's approval of the tenant. As used in this subsection, the terms "landlord" and "tenant" shall have the same meanings as provided in § 55-248.4.*

§ 36-96.3. Unlawful discriminatory housing practices.

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

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

2. ~~To discriminate~~ *Discriminate* against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, ~~or~~ familial status, *or lawful source of funds*;

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

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

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

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

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

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

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

B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the

condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

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

2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

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

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

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

§ 36-96.21. Powers of counties, cities and towns.

A. Any county, city or town which has any ordinance in effect on January 1, 1991, enacted under the Virginia Fair Housing Law (§ 36-86 et seq.), the Virginia Human Rights Act (§ 2.2-3900 et seq.), or any other applicable state law may continue to enforce such ordinance and may amend the ordinance, provided the amendment is not inconsistent with this chapter. Nothing herein shall be construed to prohibit any county, city or town under this subsection from submitting amended ordinances to the U.S. Department of Housing and Urban Development for substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

B. The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter provided that (i) such ordinances conform to this chapter ~~and are enacted prior to September 30, 1992~~ *by including protections against discrimination that are at least as protective as those required by this chapter*, and (ii) such amended ordinances are submitted to the U.S. Department of Housing and Urban Development for a determination of substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.