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SENATE BILL NO. 1228

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 3, 2017)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact § 36-96.1:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 36-96.3:1, relating to the Virginia Fair Housing Law; rights and responsibilities with respect to the use of an assistance animal in a dwelling.

Be it enacted by the General Assembly of Virginia:

1. That § 36-96.1:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 36-96.3:1 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.

"Assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

"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 a handicap" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite~~ For the purposes of this chapter, the terms "handicap" and "disability" shall be interchangeable.

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

"Major life activities" means, but shall not be limited to, any the following functions: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Person" means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations,

60 governmental entities, legal representatives, mutual companies, joint stock companies, trusts,
61 unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

62 *"Physical or mental impairment" means, but shall not be limited to, any of the following: (i) any*
63 *physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of*
64 *the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including*
65 *speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or*
66 *endocrine or (ii) any mental or psychological disorder, such as an intellectual or developmental*
67 *disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical*
68 *or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing*
69 *impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart*
70 *disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities;*
71 *emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled*
72 *substance; and alcoholism.*

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

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

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

81 ***§ 36-96.3:1. Rights and responsibilities with respect to the use of an assistance animal in a***
82 ***dwelling.***

83 *A. Persons with disabilities shall not be required to pay a pet fee or deposit or any additional rent*
84 *to maintain an assistance animal in a dwelling. A person with a disability who maintains an assistance*
85 *animal in a dwelling shall comply with any reasonable regulations that do not interfere with his equal*
86 *opportunity to use and enjoy the dwelling unit and the premises.*

87 *B. A person with a disability, or on behalf of a person with a disability, may submit a request for a*
88 *reasonable accommodation to maintain an assistance animal in a dwelling. Such request may include*
89 *supporting documentation verifying the disability and disability-related need for an accommodation*
90 *consisting of information provided by (i) the person with a disability, (ii) any person with whom the*
91 *person with a disability has or has had a therapeutic relationship, or (iii) any reliable third party who*
92 *is in a position to know about the person's disability. If a person's disability is obvious or otherwise*
93 *known to the person receiving a request, or if the need for a requested accommodation is readily*
94 *apparent or known to the person receiving a request, the person receiving a request for reasonable*
95 *accommodation shall not request any additional information about the requester's disability or the*
96 *disability-related need for such accommodation.*

97 *C. A person receiving a request for a reasonable accommodation to maintain an assistance animal*
98 *in a dwelling shall evaluate the request and any supporting documentation provided by the person who*
99 *has a disability to verify the disability or the disability-related need for the reasonable accommodation*
100 *regarding an assistance animal. For purposes of this section, "therapeutic relationship" means the*
101 *provision of medical care, program, or personal care services, in good faith, to the person with a*
102 *disability by (i) a mental health service provider as defined in § 54.1-2400.1; (ii) an individual or entity*
103 *with a valid, unrestricted state license, certification, or registration to serve persons with disabilities;*
104 *(iii) a person from a peer support or similar group that does not charge service recipients a fee or*
105 *impose any actual or implied financial requirement and who has actual knowledge about the requester's*
106 *disability; or (iv) a caregiver with actual knowledge of the requester's disability.*

107 *D. A request for reasonable accommodation to maintain an assistance animal in a dwelling may be*
108 *denied for any one of the following reasons: (i) the request is not reasonable because it constitutes an*
109 *undue financial and administrative burden as determined on a case-by-case basis; (ii) the requester does*
110 *not have a disability; (iii) the requester does not have a disability-related need for an assistance animal;*
111 *(iv) the third-party verification does not state that the requested assistance animal will (a) perform tasks*
112 *or services for the benefit of the requester or (b) provide emotional support that alleviates one or more*
113 *of the identified symptoms or effects of such requester's existing disability; (v) the requested assistance*
114 *animal poses a direct threat to (a) the health or safety of others or (b) the property of others that is not*
115 *based solely on breed, size, or type or cannot be reduced or eliminated by another reasonable*
116 *accommodation; or (vi) the insurance carrier for the owner of the dwelling would (a) cancel the owner's*
117 *insurance policy, (b) substantially increase the costs of the owner's insurance policy, or (c) adversely*
118 *change the owner's insurance policy terms because of the presence of a certain breed of dog or a*
119 *certain animal because it constitutes an undue financial and administrative burden as determined on a*
120 *case-by-case basis, and the insurance carrier declines a request from the owner of the property to make*
121 *a reasonable accommodation for such assistance animal.*

122 *E. Whenever a request for a reasonable accommodation to maintain an assistance animal in a*
123 *dwelling is denied for reasons other than (i) the requester does not have a disability or (ii) the*
124 *requester does not have a disability-related need for an assistance animal, the person receiving such*
125 *request shall initiate an interactive process with the individual requesting accommodation to determine*
126 *if there is an alternative accommodation that would effectively address the requester's disability-related*
127 *needs. If an alternative accommodation would effectively meet the requester's disability-related needs*
128 *and is reasonable, the person receiving such request shall be required to grant such request.*