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SENATE BILL NO. 1109

Offered January 9, 2019

Prefiled December 21, 2018

A BILL to amend and reenact §§ 36-96.1 through 36-96.3, 36-96.4, 36-96.6, and 55-248.47 of the Code of Virginia, relating to the Virginia Fair Housing Law; unlawful discriminatory housing practices; sexual orientation and gender identity.

Patrons—McClellan, Ebbin, Boysko and Mason; Delegates: Robinson and Carr

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-96.1 through 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*, *gender identity*, 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.

"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 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.

"Gender identity" means the gender-related identity, appearance, or other gender-related

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59 *characteristics of an individual, without regard to the individual's designated sex at birth.*

60 "Handicap" means, with respect to a person, (i) a physical or mental impairment that substantially
61 limits one or more of such person's major life activities; (ii) a record of having such an impairment; or
62 (iii) being regarded as having such an impairment. The term does not include current, illegal use of or
63 addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this
64 chapter, the terms "handicap" and "disability" shall be interchangeable.

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

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

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

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

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

87 "Restrictive covenant" means any specification in any instrument affecting title to real property that
88 purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color,
89 religion, national origin, sex, elderliness, familial status, *sexual orientation*, *gender identity*, or handicap.

90 "*Sexual orientation*" means a person's actual or perceived heterosexuality, bisexuality, or
91 homosexuality.

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

94 **§ 36-96.2. Exemptions.**

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

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

118 C. Nothing in this chapter shall prohibit a religious organization, association or society, or any
119 nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a
120 religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings

that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, *sexual orientation*, *gender identity*, or handicap. Nor shall anything in this chapter apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. Nor, where matters of personal privacy are involved, shall anything in this chapter be construed to prohibit any private, state-owned or state-supported educational institution, hospital, nursing home, religious or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

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

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

F. A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the 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.

§ 36-96.3. Unlawful discriminatory housing practices.

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

1. To 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, *sexual orientation*, or *gender identity*;

2. To 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, *sexual orientation*, or *gender identity*;

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

5. To 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, *sexual orientation*, *gender identity*, or handicap;

6. To 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, *sexual orientation*, *gender identity*, 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 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, *sexual orientation*, *gender identity*, or handicap;

8. To 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; *or*

9. To 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.

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

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

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

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

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

C. It shall be unlawful for any state, county, city, or municipal treasurer or governmental official whose responsibility it is to account for, to invest, or manage public funds to deposit or cause to be deposited any public funds in any lending institution provided for herein which is found to be committing discriminatory practices, where such findings were upheld by any court of competent jurisdiction. Upon such a court's judicial enforcement of any order to restrain a practice of such lending

institution or for said institution to cease or desist in a discriminatory practice, the appropriate fiscal officer or treasurer of the Commonwealth or any political subdivision thereof which has funds deposited in any lending institution which is practicing discrimination, as set forth herein, shall take immediate steps to have the said funds withdrawn and redeposited in another lending institution. If for reasons of sound economic management, this action will result in a financial loss to the Commonwealth or any of its political subdivisions, the action may be deferred for a period not longer than one year. If the lending institution in question has corrected its discriminatory practices, any prohibition set forth in this section shall not apply.

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

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

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

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

D. A family care home, foster home, or group home in which individuals with physical handicaps, mental illness, intellectual disability, or developmental disability reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.

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

A. As used in this section:

"Gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, without regard to the individual's designated sex at birth.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

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