

20107395D

## HOUSE BILL NO. 6

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on February 4, 2020)

(Patrons Prior to Substitute—Delegates Bourne and Lopez [HB 357])

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

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 36-96.1 through 36-96.3 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, *source of funds*, 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~~ *ensured*. 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.

"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. 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

HOUSE SUBSTITUTE

HB6H1

60 mortgage lender.

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

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

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

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

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

84 *"Source of funds" means any source that lawfully provides funds to or on behalf of a renter or buyer*  
85 *of housing, including any assistance, benefit, or subsidy program, whether such program is administered*  
86 *by a governmental or nongovernmental entity.*

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

89 **§ 36-96.2. Exemptions.**

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

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

113 C. Nothing in this chapter shall prohibit a religious organization, association or society, or any  
114 nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a  
115 religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings  
116 that it owns or operates for other than a commercial purpose to persons of the same religion, or from  
117 giving preferences to such persons, unless membership in such religion is restricted on account of race,  
118 color, national origin, sex, elderliness, familial status, or handicap. Nor shall anything in this chapter  
119 apply to a private membership club not in fact open to the public, which as an incident to its primary  
120 purpose or purposes provides lodging which it owns or operates for other than a commercial purpose,  
121 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.

*H. Nothing in this chapter shall prohibit an owner or an owner's managing agent from denying or limiting the rental or occupancy of a rental dwelling unit to a person because of such person's source of funds, provided that such owner does not own more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice. However, if an owner, whether individually or through a business entity, owns more than a 10 percent interest in more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice, the exemption provided in this subsection shall not apply.*

#### **§ 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, *source of funds*, 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, *source of funds*, or familial status;

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, *source of funds*, 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 that~~ 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, *source of funds*, 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, *source of funds*, 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, *source of funds*, or handicap or for any person to honor or exercise, or attempt to honor or exercise, any such

183 discriminatory covenant pertaining to housing;

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

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

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

195 B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of  
196 the handicapped person, reasonable modifications of existing premises occupied or to be occupied by  
197 any person if such modifications may be necessary to afford such person full enjoyment of the premises;  
198 except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition  
199 permission for a modification on the renter's agreeing to restore the interior of the premises to the  
200 condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make  
201 reasonable accommodations in rules, practices, policies, or services when such accommodations may be  
202 necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection  
203 with the design and construction of covered multi-family dwellings for first occupancy after March 13,  
204 1991, a failure to design and construct dwellings in such a manner that:

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

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

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

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

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