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HOUSE BILL NO. 586

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 36-96.3:1, 36-96.3:2, and 59.1-200 of the Code of Virginia, relating to Virginia Fair Housing Law; use of assistance animal in a dwelling; penalties.

Patron—VanValkenburg

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-96.3:1, 36-96.3:2, and 59.1-200 of the Code of Virginia are amended and reenacted as follows:

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

A. A person with a disability, or a person associated with such person, who maintains an assistance animal in a dwelling shall comply with the rental agreement or any rules and regulations of the property owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises. Such person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for such damages in accordance with such documents or state law. Nothing herein shall be construed to affect any cause of action against any resident for other damages under the laws of the Commonwealth.

B. If a person's disability is obvious or otherwise known to the person receiving a request, or if the need for a requested accommodation is readily apparent or known to the person receiving a request, the person receiving a request for reasonable accommodation may not request any additional verification about the requester's disability. If a person's disability is readily apparent or known to the person receiving the request but the disability-related need is not readily apparent or known, the person receiving the request may ask for additional verification to evaluate the requester's disability-related need.

C. A person with a disability, or a person associated with such person, may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling. Subject to subsection B, the person receiving the request may ask the requester to provide, *in writing*, reliable supporting documentation of the disability and the disability-related need for an assistance animal, ~~including documentation from any from a person with whom the person with a disability requesting the reasonable accommodation has or has had a therapeutic relationship.~~

D. Subject to subsection B, a person receiving a request for a reasonable accommodation to maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting documentation to verify the disability and the disability-related need for the reasonable accommodation regarding an assistance animal.

E. For purposes of this section, "therapeutic relationship" means the provision of medical care, program care, or personal care services, in good faith, to the person with a disability by (i) a mental health service provider as defined in § 54.1-2400.1; (ii) an individual or entity with a valid, unrestricted state license, certification, or registration to serve persons with disabilities; (iii) a person from a peer support or similar group that does not charge service recipients a fee or impose any actual or implied financial requirement and who has actual knowledge about the requester's disability; or (iv) a caregiver, reliable third party, or government entity with actual knowledge of the requester's disability.

F. Any person who knowingly and willfully misrepresents himself as needing an assistance animal is guilty of a Class 4 misdemeanor.

G. No person shall provide supporting documentation in an attempt to verify the existence of a disability or disability-related need for a person seeking a reasonable accommodation pursuant to this section if he does not have a therapeutic relationship with the person requesting the reasonable accommodation. A violation of this subsection constitutes a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

§ 36-96.3:2. Reasonable accommodations; interactive process.

A. When a request for a reasonable accommodation establishes that such accommodation is necessary to afford a person with a disability, and who has a disability-related need, an equal opportunity to use and enjoy a dwelling and does not impose either (i) an undue financial and administrative burden or (ii)

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59 a fundamental alteration to the nature of the operations of the person receiving the request, the request
60 for the accommodation is reasonable and shall be granted.

61 B. When a person receives a request for accessible parking to accommodate a disability, the person
62 receiving the request shall treat such request as a request for reasonable accommodation as provided by
63 this chapter.

64 C. When a request for a reasonable accommodation may impose either (i) an undue financial and
65 administrative burden or (ii) a fundamental alteration to the nature of the operations of the person
66 receiving the request, the person receiving the request shall offer to engage in a good-faith interactive
67 process to determine if there is an alternative accommodation that would effectively address the
68 disability-related needs of the requester. An interactive process is not required when the requester does
69 not have a disability and a disability-related need for the requested accommodation. As part of the
70 interactive process, unless the reasonableness and necessity for the accommodation has been established
71 by the requester, a request may be made for additional supporting documentation to evaluate the
72 reasonableness of either the requested accommodation or any identified alternative accommodations. If
73 an alternative accommodation is identified that effectively meets the requester's disability-related needs
74 and is reasonable, the person receiving the reasonable accommodation request shall make the effective
75 alternative accommodation. However, the requester shall not be required to accept an alternative
76 accommodation if the requested accommodation is also reasonable. The various factors to be considered
77 for determining whether an accommodation imposes an undue financial and administrative burden
78 include (a) the cost of the requested accommodation, including any substantial increase in the cost of the
79 owner's insurance policy; (b) the financial resources of the person receiving the request; (c) the benefits
80 that the accommodation would provide to the person with a disability; and (d) the availability of
81 alternative accommodations that would effectively meet the requester's disability-related needs.

82 D. A request for a reasonable accommodation shall be determined on a case-by-case basis and may
83 be denied if (i) the person on whose behalf the request for an accommodation was submitted is not
84 disabled; (ii) there is no disability-related need for the accommodation; (iii) *supporting documentation*
85 *of the disability or disability-related need is deemed unreliable*, (iv) the accommodation imposes an
86 undue financial and administrative burden on the person receiving the request; or ~~(iv)~~ (v) the
87 accommodation would fundamentally alter the nature of the operations of the person receiving the
88 request. With respect to a request for reasonable accommodation to maintain an assistance animal in a
89 dwelling, the requested assistance animal shall (a) work, provide assistance, or perform tasks or services
90 for the benefit of the requester or (b) provide emotional support that alleviates one or more of the
91 identified symptoms or effects of such requester's existing disability. In addition, as determined by the
92 person receiving the request, the requested assistance animal shall not pose a clear and present threat of
93 substantial harm to others or to the dwelling itself that is not solely based on breed, size, or type or
94 cannot be reduced or eliminated by another reasonable accommodation.

95 **§ 59.1-200. Prohibited practices.**

96 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer
97 transaction are hereby declared unlawful:

- 98 1. Misrepresenting goods or services as those of another;
- 99 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 100 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
101 services, with another;
- 102 4. Misrepresenting geographic origin in connection with goods or services;
- 103 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
104 benefits;
- 105 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 106 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
107 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfections, or "not first
108 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
109 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
110 irregulars, imperfections or "not first class";
- 111 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
112 at the price or upon the terms advertised.

113 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or
114 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
115 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph
116 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such
117 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or
118 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement
119 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

- 120 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts

of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515, 3.2-6516, or 3.2-6519 is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.);

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.);

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.);

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.);

- 182 24. Violating any provision of § 54.1-1505;
183 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
184 17.6 (§ 59.1-207.34 et seq.);
185 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
186 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
187 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
188 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
189 seq.);
190 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
191 seq.);
192 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
193 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
194 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
195 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
196 35. Using the consumer's social security number as the consumer's account number with the supplier,
197 if the consumer has requested in writing that the supplier use an alternate number not associated with
198 the consumer's social security number;
199 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
200 37. Violating any provision of § 8.01-40.2;
201 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
202 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
203 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
204 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
205 (§ 59.1-525 et seq.);
206 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
207 43. Violating any provision of § 59.1-443.2;
208 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
209 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
210 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
211 47. Violating any provision of § 18.2-239;
212 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
213 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
214 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
215 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
216 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
217 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
218 children's products that are used, secondhand or "seconds";
219 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
220 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
221 52. Violating any provision of § 8.2-317.1;
222 53. Violating subsection A of § 9.1-149.1;
223 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
224 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
225 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
226 which defective drywall has been permanently installed or affixed;
227 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
228 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
229 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
230 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
231 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
232 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
233 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
234 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
235 59. Violating any provision of subsection E of § 32.1-126;
236 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
237 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
238 61. Violating any provision of § 2.2-2001.5;
239 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;
240 63. Violating any provision of § 6.2-312;
241 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;
242 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2; and
243 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.); and

244 67. *Violating subsection G of § 36-96.3:1.*

245 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
246 lease solely by reason of the failure of such contract or lease to comply with any other law of the
247 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
248 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
249 such contract or lease.

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