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HOUSE BILL NO. 804

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 36-96.2 and 55.1-1203 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; nonrefundable application fee; limitations.

Patrons—Price and Bennett-Parker

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 36-96.2 and 55.1-1203 of the Code of Virginia are amended and reenacted as follows:****§ 36-96.2. Exemptions.**

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

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

C. Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a 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, military status, or disability. 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 that 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, or 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

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HB804

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 a landlord from considering evidence of an applicant's status as a victim of family abuse, as defined in § 16.1-228, to mitigate any adverse effect of an otherwise qualified applicant's application pursuant to subsection D of § 55.1-1203.

I. 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.

J. It shall not be unlawful under this chapter for an owner or an owner's managing agent to deny or limit a person's rental or occupancy of a rental dwelling unit based on the person's source of funds for that unit if such source is not approved within 15 days of the person's submission of the request for tenancy approval.

§ 55.1-1203. Application; deposit, fee, portable tenant screening report, and additional information.

A. Any landlord may require a refundable application deposit in addition to a nonrefundable application fee. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of such expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

B. A landlord may request that a prospective tenant shall not obtain any consumer report or conduct any other investigation into the background or qualifications of a rental applicant without first (i) establishing a written rental admission policy that is available to the public and that includes a disclosure as to whether the landlord accepts portable tenant screening reports and (ii) providing the applicant with a copy of the written rental admission policy or an electronic communication that states where and how such policy may be accessed electronically.

C. An applicant may provide information in the form of a portable tenant screening report that will enable the landlord to determine whether each the applicant may become a tenant. The Such report shall have been produced within the 30 days preceding submission of the application and shall include (i) the applicant's history of eviction judgments as reported on the statewide online case information system maintained by the Office of the Executive Secretary of the Supreme Court; (ii) verification of the applicant's income; (iii) the applicant's address and rental history, including the name of any former landlord for the past three years; and (iv) the results of a national sex offender registry search. The portable tenant screening report may be prepared by the applicant or a housing counselor certified by the U.S. Department of Housing and Urban Development acting on behalf of the applicant. A landlord shall not require an applicant who has provided a portable tenant screening report that complies with the requirement in this section to pay for any additional background checks.

D. If an applicant does not provide the landlord with a portable tenant screening report in accordance with subsection C, the landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of 18 U.S.C. § 701. The landlord may also require, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit, that each applicant provide a social security number

issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service.

~~C. An application fee shall not exceed \$50, exclusive of any~~ *E. A landlord may charge an applicant actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant if the applicant has not provided a valid portable tenant screening report in accordance with subsection C. However, where an application is being made in no case may a landlord collect a nonrefundable fee greater than the landlord's actual out-of-pocket expenses. Where an applicant who has not provided a valid portable tenant screening report in accordance with subsection C applies for a dwelling unit that is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, an application fee shall not exceed the U.S. Internal Revenue Service, or the state housing finance agency, the landlord may recover a nonrefundable fee of no more than \$32, exclusive of including any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.*

~~D. F. A landlord that denies an application to lease rental property, or that takes other adverse action in connection with an application, including approving the application contingent upon payment of an increased security deposit, shall, within three business days, provide the tenant with written or electronic documentation containing a plain statement of all reasons for the denial or adverse action.~~

G. A landlord shall consider evidence of an applicant's status as a victim of family abuse, as defined in § 16.1-228, to mitigate any adverse effect of an otherwise qualified applicant's low credit score. In order to establish the applicant's status as a victim of family abuse, an applicant may submit to the landlord (i) a letter from a sexual and domestic violence program, a housing counselor certified by the U.S. Department of Housing and Urban Development, or an attorney representing the applicant; (ii) a law-enforcement incident report; or (iii) a court order.

H. If a landlord does not comply with this section, the applicant may recover actual damages, including all amounts paid to the landlord as an application fee, application deposit, or reimbursement for any of the landlord's out-of-pocket expenses that were charged to the prospective tenant, along with attorney fees.

I. The provisions of subsections B through F shall only apply to landlords that own more than four rental dwelling units in the Commonwealth, or more than a 10 percent interest in more than four rental dwelling units, either individually or through a business entity. Notwithstanding this limitation, no landlord shall collect a nonrefundable fee from an applicant that exceeds the amount of the landlord's out-of-pocket expenses paid to a third party performing background, credit, or other pre-occupancy checks.