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HOUSE BILL NO. 1725

Offered January 11, 2023

Prefiled January 9, 2023

A *BILL to amend and reenact §§ 36-96.3:1 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 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.**

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 reliable documentation of the disability and the disability-related need for an assistance animal, including documentation from any person with whom the person with a disability 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 that verifies 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. No person listed in clauses (i) through (iv) of subsection E shall provide fraudulent supporting documentation to evince the existence of a disability or disability-related need for a person requesting a reasonable accommodation pursuant to this section. A violation of this subsection constitutes a prohibited practice under the provisions of § 59.1-200 and shall be subject to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

§ 59.1-200. Prohibited practices.

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

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or

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59 benefits;

60 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

61 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
62 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
63 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
64 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
65 irregulars, imperfects or "not first class";

66 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
67 at the price or upon the terms advertised.

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

75 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts
76 of price reductions;

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

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

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

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

89 13a. Failing to provide to a consumer, or failing to use or include in any written document or
90 material provided to or executed by a consumer, in connection with a consumer transaction any
91 statement, disclosure, notice, or other information however characterized when the supplier is required
92 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
93 information in connection with the consumer transaction;

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

96 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
97 3.2-6516, or 3.2-6519 is a violation of this chapter;

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

99 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
100 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
101 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
102 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
103 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
104 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
105 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
106 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
107 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
108 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
109 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
110 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
111 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
112 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §
113 46.2-100;

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

119 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
120 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.);

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.);

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.);

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.);

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.);

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

47. Violating any provision of § 18.2-239;

48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";

50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);

51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

52. Violating any provision of § 8.2-317.1;

53. Violating subsection A of § 9.1-149.1;

54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed;

182 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
183 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
184 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
185 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
186 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;

187 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);

188 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;

189 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);

190 59. Violating any provision of subsection E of § 32.1-126;

191 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed
192 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;

193 61. Violating any provision of § 2.2-2001.5;

194 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;

195 63. Violating any provision of § 6.2-312;

196 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;

197 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2;

198 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.);

199 67. Knowingly violating any provision of § 8.01-27.5;

200 68. Failing to make available a conspicuous online option to cancel a recurring purchase of a good
201 or service as required by § 59.1-207.46;

202 69. Selling or offering for sale to a person younger than 21 years of age any substance intended for
203 human consumption, orally or by inhalation, that contains tetrahydrocannabinol. This subdivision shall
204 not (i) apply to products that are approved for marketing by the U.S. Food and Drug Administration and
205 scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or (ii) be construed to prohibit any conduct
206 permitted under Article 4.2 of Chapter 34 of Title 54.1 of the Code of Virginia;

207 70. Selling or offering for sale any substance intended for human consumption, orally or by
208 inhalation, that contains tetrahydrocannabinol, unless such substance is (i) contained in child-resistant
209 packaging, as defined in § 4.1-600; (ii) equipped with a label that states, in English and in a font no less
210 than 1/16 of an inch, (a) that the substance contains tetrahydrocannabinol and may not be sold to
211 persons younger than 21 years of age, (b) all ingredients contained in the substance, (c) the amount of
212 such substance that constitutes a single serving, and (d) the total percentage and milligrams of
213 tetrahydrocannabinol included in the substance and the number of milligrams of tetrahydrocannabinol
214 that are contained in each serving; and (iii) accompanied by a certificate of analysis, produced by an
215 independent laboratory that is accredited pursuant to standard ISO/IEC 17025 of the International
216 Organization of Standardization by a third-party accrediting body, that states the tetrahydrocannabinol
217 concentration of the substance or the tetrahydrocannabinol concentration of the batch from which the
218 substance originates. This subdivision shall not (i) apply to products that are approved for marketing by
219 the U.S. Food and Drug Administration and scheduled in the Drug Control Act (§ 54.1-3400 et seq.) or
220 (ii) be construed to prohibit any conduct permitted under Article 4.2 (§ 54.1-3442.5 et seq.) of Chapter
221 34 of Title 54.1 of the Code of Virginia;

222 71. Manufacturing, offering for sale at retail, or selling at retail an industrial hemp extract, as defined
223 in § 3.2-5145.1, a food containing an industrial hemp extract, or a substance containing
224 tetrahydrocannabinol that depicts or is in the shape of a human, animal, vehicle, or fruit; and

225 72. Selling or offering for sale any substance intended for human consumption, orally or by
226 inhalation, that contains tetrahydrocannabinol and, without authorization, bears, is packaged in a
227 container or wrapper that bears, or is otherwise labeled to bear the trademark, trade name, famous mark
228 as defined in 15 U.S.C. § 1125, or other identifying mark, imprint, or device, or any likeness thereof, of
229 a manufacturer, processor, packer, or distributor of a product intended for human consumption other
230 than the manufacturer, processor, packer, or distributor that did in fact so manufacture, process, pack, or
231 distribute such substance; and

232 73. Violating subsection F of § 36-96.3:1.

233 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
234 lease solely by reason of the failure of such contract or lease to comply with any other law of the
235 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
236 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
237 such contract or lease.

238 **2. That if any provision of this act is determined by the U.S. Department of Housing and Urban**
239 **Development to not be substantially equivalent to or to be otherwise inconsistent with the federal**
240 **Fair Housing Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, such provision shall be**
241 **unenforceable but shall not affect, impair, or invalidate the remainder of this act.**