

HOUSE BILL NO. 2046

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Bourne)

A BILL to amend and reenact §§ 36-96.3, 36-96.3:2, and 36-96.17 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 §§ 36-96.3, 36-96.3:2, and 36-96.17 of the Code of Virginia are amended and reenacted as follows:

§ 36-96.3. Unlawful discriminatory housing practices.

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

1. Refuse to sell or rent after the making of a bona fide offer or 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, familial status, sexual orientation, gender identity, or status as a veteran;

2. 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, familial status, sexual orientation, gender identity, or status as a veteran;

3. 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 on the basis of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability. 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

27 chapter that shall not be overcome by a general disclaimer. However, reference alone to places of worship,
28 including churches, synagogues, temples, or mosques, in any such notice, statement, or advertisement
29 shall not be prima facie evidence of an illegal preference;

30 4. Represent to any person because of race, color, religion, national origin, sex, elderliness, familial
31 status, source of funds, sexual orientation, gender identity, status as a veteran, or disability that any
32 dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

33 5. Deny any person access to membership in or participation in any multiple listing service, real
34 estate brokers' organization, or other service, organization or facility relating to the business of selling or
35 renting dwellings or discriminate against such person in the terms or conditions of such access,
36 membership, or participation because of race, color, religion, national origin, sex, elderliness, familial
37 status, source of funds, sexual orientation, gender identity, status as a veteran, or disability;

38 6. Include in any transfer, sale, rental, or lease of housing any restrictive covenant that
39 discriminates because of race, color, religion, national origin, sex, elderliness, familial status, source of
40 funds, sexual orientation, gender identity, status as a veteran, or disability or for any person to honor or
41 exercise, or attempt to honor or exercise, any such discriminatory covenant pertaining to housing;

42 7. Induce or attempt to induce to sell or rent any dwelling by representations regarding the entry
43 or prospective entry into the neighborhood of a person or persons of a particular race, color, religion,
44 national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status
45 as a veteran, or disability;

46 8. Refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate
47 or make unavailable or deny a dwelling because of a disability of (i) the buyer or renter; (ii) a person
48 residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (iii) any
49 person associated with the buyer or renter; or

50 9. Discriminate against any person in the terms, conditions, or privileges of sale or rental of a
51 dwelling, or in the provision of services or facilities in connection therewith because of a disability of (i)
52 that person; (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented, or
53 made available; or (iii) any person associated with that buyer or renter.

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

64 1. The public use and common use areas of the dwellings are readily accessible to and usable by
65 disabled persons;

66 2. All the doors designed to allow passage into and within all premises are sufficiently wide to
67 allow passage by disabled persons in wheelchairs; and

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

75 C. It shall be an unlawful discriminatory housing practice for any political jurisdiction or its
76 employees or appointed commissions to discriminate in the application of local land use ordinances or
77 guidelines, or in the permitting of housing developments, (i) on the basis of race, color, religion, national
78 origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a
79 veteran, or disability; (ii) because the housing development contains or is expected to contain affordable
80 housing units occupied or intended for occupancy by families or individuals with incomes at or below 80

81 percent of the median income of the area where the housing development is located or is proposed to be
82 located; or (iii) by prohibiting or imposing conditions upon the rental or sale of dwelling units, provided
83 that the provisions of this subsection shall not be construed to prohibit ordinances related to short-term
84 rentals as defined in § 15.2-983. It shall not be a violation of this chapter if land use decisions or decisions
85 relating to the permitting of housing developments are based upon considerations of limiting high
86 concentrations of affordable housing.

87 D. Compliance with the appropriate requirements of the American National Standards for Building
88 and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of
89 regulations promulgated by HUD providing accessibility and usability for physically disabled people shall
90 be deemed to satisfy the requirements of subdivision B 3.

91 ~~D.~~E. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation
92 that requires dwellings to be designed and constructed in a manner that affords disabled persons greater
93 access than is required by this chapter.

94 **§ 36-96.3:2. Reasonable accommodations; interactive process.**

95 A. When a request for a reasonable accommodation establishes that such accommodation is
96 necessary to afford a person with a disability, and who has a disability-related need, an equal opportunity
97 to use and enjoy a dwelling and does not impose either (i) an undue financial and administrative burden
98 or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the
99 request for the accommodation is reasonable and shall be granted.

100 B. When a person receives a request for accessible parking to accommodate a disability, the person
101 receiving the request shall treat such request as a reasonable accommodation as provided by this chapter.
102 Providing a parking accommodation may include creating signage, painting markings, redistributing or
103 reconfiguring space, or creating curb cuts. Any costs, fees, or charges related to the installation,
104 designation, marking, or reconfiguration of a parking space related to such reasonable accommodation
105 request shall be borne by the person receiving the request.

106 C. When a request for a reasonable accommodation may impose either (i) an undue financial and
107 administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving

108 the request, the person receiving the request shall offer to engage in a good-faith interactive process to
109 determine if there is an alternative accommodation that would effectively address the disability-related
110 needs of the requester. An interactive process is not required when the requester does not have a disability
111 and a disability-related need for the requested accommodation. As part of the interactive process, unless
112 the reasonableness and necessity for the accommodation has been established by the requester, a request
113 may be made for additional supporting documentation to evaluate the reasonableness of either the
114 requested accommodation or any identified alternative accommodations. If an alternative accommodation
115 is identified that effectively meets the requester's disability-related needs and is reasonable, the person
116 receiving the reasonable accommodation request shall make the effective alternative accommodation.
117 However, the requester shall not be required to accept an alternative accommodation if the requested
118 accommodation is also reasonable. The various factors to be considered for determining whether an
119 accommodation imposes an undue financial and administrative burden include (a) the cost of the requested
120 accommodation, including any substantial increase in the cost of the owner's insurance policy; (b) the
121 financial resources of the person receiving the request; (c) the benefits that the accommodation would
122 provide to the person with a disability; and (d) the availability of alternative accommodations that would
123 effectively meet the requester's disability-related needs.

124 ~~C-D.~~ A request for a reasonable accommodation shall be determined on a case-by-case basis and
125 may be denied if (i) the person on whose behalf the request for an accommodation was submitted is not
126 disabled; (ii) there is no disability-related need for the accommodation; (iii) the accommodation imposes
127 an undue financial and administrative burden on the person receiving the request; or (iv) the
128 accommodation would fundamentally alter the nature of the operations of the person receiving the request.
129 With respect to a request for reasonable accommodation to maintain an assistance animal in a dwelling,
130 the requested assistance animal shall (a) work, provide assistance, or perform tasks or services for the
131 benefit of the requester or (b) provide emotional support that alleviates one or more of the identified
132 symptoms or effects of such requester's existing disability. In addition, as determined by the person
133 receiving the request, the requested assistance animal shall not pose a clear and present threat of substantial

134 harm to others or to the dwelling itself that is not solely based on breed, size, or type or cannot be reduced
135 or eliminated by another reasonable accommodation.

136 **§ 36-96.17. Civil action by Attorney General; matters involving the legality of any local**
137 **zoning or other land use ordinance; pattern or practice cases; or referral of conciliation agreement**
138 **for enforcement.**

139 A. If the Board determines, after consultation with the Office of the Attorney General, that an
140 alleged discriminatory housing practice involves (i) the legality of any local zoning or land use ordinance
141 or (ii) activity proscribed in subsection C of § 36-96.3, instead of issuing a charge, the Board shall
142 immediately refer the matter to the Attorney General for civil action in the appropriate circuit court for
143 appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of
144 ~~eighteen~~ 18 months after the date of the occurrence or the termination of the alleged discriminatory
145 housing practice.

146 B. Whenever the Attorney General has reasonable cause to believe that any person or group of
147 persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted
148 by this chapter, or that any group of persons has been denied any of the rights granted by this chapter and
149 such denial raises an issue of general public importance, the Attorney General may commence a civil
150 action in the appropriate circuit court for appropriate relief.

151 C. In the event of a breach of a conciliation agreement by a respondent, the Board may authorize
152 a civil action by the Attorney General. The Attorney General may commence a civil action in any
153 appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced
154 no later than the expiration of ~~ninety~~ 90 days after the referral of such alleged breach.

155 D. The Attorney General, on behalf of the Board, or other party at whose request a subpoena is
156 issued, under this chapter, may enforce such subpoena in appropriate proceedings in the appropriate circuit
157 court.

158 E. In a civil action under subsections A, B, and C, the court may:

159 1. Award such preventive relief, including a permanent or temporary injunction, restraining order,
160 or other order against the person responsible for a violation of this chapter as is necessary to assure the
161 full enjoyment of the rights granted by this chapter.

162 2. Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000 for a first
163 violation; and (ii) in an amount not exceeding \$100,000 for any subsequent violation.

164 3. Award the prevailing party reasonable ~~attorney's~~ attorney fees and costs. The Commonwealth
165 shall be liable for such fees and costs to the extent provided by the Code of Virginia.

166 The court or jury may award such other relief to the aggrieved person, as the court deems
167 appropriate, including compensatory damages, and punitive damages without limitation otherwise
168 imposed by state law.

169 F. Upon timely application, any person may intervene in a civil action commenced by the Attorney
170 General under subsection A, B, or C ~~which~~ that involves an alleged discriminatory housing practice with
171 respect to which such person is an aggrieved person or a party to a conciliation agreement. The court may
172 grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a
173 civil action under § 36-96.18.

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