

HOUSE BILL NO. 804

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Price)

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.

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

27 perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any licensee of the
28 Real Estate Board or regulant of the Fair Housing Board, regardless of whether the licensee is acting in
29 his personal or professional capacity.

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

34 C. Nothing in this chapter shall prohibit a religious organization, association or society, or any
35 nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a
36 religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings
37 that it owns or operates for other than a commercial purpose to persons of the same religion, or from
38 giving preferences to such persons, unless membership in such religion is restricted on account of race,
39 color, national origin, sex, elderliness, familial status, sexual orientation, gender identity, military status,
40 or disability. Nor shall anything in this chapter apply to a private membership club not in fact open to the
41 public, which as an incident to its primary purpose or purposes provides lodging that it owns or operates
42 for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members
43 or from giving preference to its members. Nor, where matters of personal privacy are involved, shall
44 anything in this chapter be construed to prohibit any private, state-owned, or state-supported educational
45 institution, hospital, nursing home, or religious or correctional institution from requiring that persons of
46 both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or
47 restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

48 D. Nothing in this chapter prohibits conduct against a person because such person has been
49 convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled
50 substance as defined in federal law.

51 E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing
52 to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

53 F. A rental application may require disclosure by the applicant of any criminal convictions and the
54 owner or managing agent may require as a condition of acceptance of the rental application that applicant
55 consent in writing to a criminal record check to verify the disclosures made by applicant in the rental
56 application. The owner or managing agent may collect from the applicant moneys to reimburse the owner
57 or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks.
58 Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an individual who,
59 based on a prior record of criminal convictions involving harm to persons or property, would constitute a
60 clear and present threat to the health or safety of other individuals.

61 G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction
62 regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents
63 of dwellings may develop and implement reasonable occupancy and safety standards based on factors
64 such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as
65 the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits the rental
66 application or similar document from requiring information concerning the number, ages, sex and familial
67 relationship of the applicants and the dwelling's intended occupants.

68 H. Nothing in this chapter shall prohibit a landlord from considering evidence of an applicant's
69 status as a victim of family abuse, as defined in § 16.1-228, to mitigate any adverse effect of an otherwise
70 qualified applicant's application pursuant to subsection ~~D~~E of § 55.1-1203.

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

78 J. It shall not be unlawful under this chapter for an owner or an owner's managing agent to deny
79 or limit a person's rental or occupancy of a rental dwelling unit based on the person's source of funds for

80 that unit if such source is not approved within 15 days of the person's submission of the request for tenancy
81 approval.

82 **§ 55.1-1203. Application; deposit, fee, and additional information.**

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

92 B. A landlord shall not obtain any consumer report or conduct any other investigation into the
93 background or qualifications of a rental applicant without first (i) establishing a written rental admission
94 policy that is available to the public and includes a disclosure of the amount of all nonrefundable
95 application fees and deposits and (ii) providing the applicant either (a) a copy of the landlord's written
96 admission policy or (b) an electronic communication stating where the landlord's written admission
97 policies may be accessed and providing a hyperlink or other electronic access to such policy. The written
98 application policy may be provided through posting on a website available to the public.

99 C. A landlord may request that a prospective tenant provide information that will enable the
100 landlord to determine whether each applicant may become a tenant. The landlord may photocopy each
101 applicant's driver's license or other similar photo identification, containing either the applicant's social
102 security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.
103 However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a
104 violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each
105 applicant is eligible to become a tenant in the landlord's dwelling unit, that each applicant provide a social

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

108 ~~C-D.~~ An application fee shall not exceed \$50, exclusive of any actual out-of-pocket expenses paid
109 by the landlord to a third party performing background, credit, or other pre-occupancy checks on the
110 applicant. However, where an application is being made for a dwelling unit that is a public housing unit
111 or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development,
112 an application fee shall not exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third
113 party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

114 ~~D-E.~~ A landlord shall consider evidence of an applicant's status as a victim of family abuse, as
115 defined in § 16.1-228, to mitigate any adverse effect of an otherwise qualified applicant's low credit score.
116 In order to establish the applicant's status as a victim of family abuse, an applicant may submit to the
117 landlord (i) a letter from a sexual and domestic violence program, a housing counselor certified by the
118 U.S. Department of Housing and Urban Development, or an attorney representing the applicant; (ii) a law-
119 enforcement incident report; or (iii) a court order. ~~If a landlord does not comply with this section, the~~
120 ~~applicant may recover actual damages, including all amounts paid to the landlord as an application fee,~~
121 ~~application deposit, or reimbursement for any of the landlord's out-of-pocket expenses that were charged~~
122 ~~to the prospective tenant, along with attorney fees.~~

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

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