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SENATE BILL NO. 803

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact § 36-96.1:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 36-96.5:1, relating to Virginia Fair Housing Law; discriminatory housing practices; quid pro quo harassment and hostile environment harassment.

Be it enacted by the General Assembly of Virginia:

1. That § 36-96.1:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 36-96.5:1 as follows:

§ 36-96.1:1. Definitions.

For the purposes of this chapter, unless the context requires a different meaning:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Disability" means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law.

"Discriminatory housing practices" means an act that is unlawful under § 36-96.3, 36-96.4, 36-96.5, 36-96.5:1, or 36-96.6.

"Dwelling" means any building, structure, or portion thereof that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

"Family" includes a single individual, whether male or female.

"Hostile environment harassment" refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with the (i) availability, sale, rental, use, or enjoyment of a dwelling; (ii) the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or (iii) the availability, terms, or conditions of a residential real estate-related transaction. "Hostile environment harassment" does not require a change in the economic benefits, terms, or conditions of the dwelling or the housing-related services or facilities, or of the residential real estate transaction.

"Lending institution" includes any bank, savings institution, credit union, insurance company or mortgage lender.

"Major life activities" includes any the following functions: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

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"Military status" means status as (i) a member of the uniformed forces, as defined in 10 U.S.C. § 101(a)(5), of the United States or a reserve component thereof named under 10 U.S.C. § 10101, (ii) a veteran as defined in 38 U.S.C. § 101(2), or (iii) a dependent as defined in 50 U.S.C. § 3911(4) except that the support provided by the service member to the individual shall have been provided 180 days immediately preceding an alleged action that if proven true would constitute unlawful discrimination under this section instead of 180 days immediately preceding an application for relief under 50 U.S.C. Chapter 50.

"Person" means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

"Physical or mental impairment" includes any of the following: (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine or (ii) any mental or psychological disorder, such as an intellectual or developmental disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities; emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled substance; and alcoholism.

"*Quid pro quo harassment*" refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to (i) the sale, rental, or availability of a dwelling; (ii) the terms, conditions, or privileges of the sale or rental or the provision of services or facilities in connection therewith; or (iii) the availability, terms, or conditions of a residential real estate-related transaction. An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.

"Religion" includes any outward expression of religious faith, including adherence to religious dressing and grooming practices and the carrying or display of religious items or symbols.

"Respondent" means any person or other entity alleged to have violated the provisions of this chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined pursuant to the provisions of § 36-96.9.

"Restrictive covenant" means any specification in any instrument affecting title to real property that purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color, religion, national origin, sex, elderliness, familial status, sexual orientation, gender identity, military status, or disability.

"Source of funds" means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

"To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to occupy premises not owned by the occupant.

§ 36-96.5:1. Quid pro quo and hostile environment harassment.

A. Quid pro quo harassment or hostile environment harassment because of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, military status, or disability shall be an unlawful discriminatory housing practice under this chapter.

B. Quid pro quo harassment or hostile environment harassment may be written, verbal, or other conduct and does not require physical contact.

C. A single incident of quid pro quo harassment because of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, military status, or disability may constitute a discriminatory housing practice where the incident is sufficiently severe to create evidence of such harassment.

D. Whether hostile environment harassment exists depends upon the totality of the circumstances. Factors to be considered in determining whether such harassment exists include (i) the nature of the conduct; (ii) the context in which the incidents occurred; (iii) the severity, scope, frequency, duration, and location of the conduct; and (iv) the relationships of the persons involved. Psychological or physical harm shall not be required to be demonstrated to prove that a hostile environment exists, but may be relevant to such determination and the amount of damages to which an aggrieved person may be entitled if it is so determined.

Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment shall be evaluated from the perspective of a reasonable person in the aggrieved person's position.