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HOUSE BILL NO. 804**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on February 10, 2022)

(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 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 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

60 individual who, based on a prior record of criminal convictions involving harm to persons or property,
61 would constitute a clear and present threat to the health or safety of other individuals.

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

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

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

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

83 **§ 55.1-1203. Application; deposit, fee, and additional information.**

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

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

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

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

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

122 a law-enforcement incident report; or (iii) a court order. If a landlord does not comply with this section,
123 the applicant may recover actual damages, including all amounts paid to the landlord as an application
124 fee, application deposit, or reimbursement for any of the landlord's out-of-pocket expenses that were
125 charged to the prospective tenant, along with attorney fees.

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