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HOUSE BILL NO. 1509

Offered January 9, 2013

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A BILL to amend and reenact §§ 8.01-27.1, 8.01-27.2, 8.01-126, 8.01-471, and 17.1-626.1 of the Code of Virginia, relating to civil action; failed electronic payments; unlawful detainer remedies.

Patron—Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-27.1, 8.01-27.2, 8.01-126, 8.01-471, and 17.1-626.1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-27.1. Additional recovery in certain civil actions concerning checks.

A. Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, in any civil claim or action made or brought against the drawer of a check, draft, or order, or against a person who has authorized an electronic payment, including payment by credit card, debit card, or electronic funds transfer, and (i) the payment of which the check, draft, or order has been refused by the drawee depository because of lack of funds in or credit with such drawee depository; (ii) the electronic payment is not completed because it is declined, reversed, or otherwise rejected by the financial institution or other entity responsible for the payment; or because (iii) such check, draft, or order was returned or such electronic payment was declined, reversed, or otherwise rejected because of a stop-payment order placed in bad faith on the check, draft or order, or electronic payment by the drawer or person who authorized the electronic payment, the holder or his agent or the person authorized to receive the electronic payment or his agent shall be entitled to claim, in addition to the face amount of the check, draft, order, or electronic payment, (i) a legal interest from the date of the check, draft, or order or from the date when the authorized electronic payment was to be payable (ii) the protest or bad check return fee, if; (b) any; fee charged to the holder or person authorized to receive the electronic payment by his bank or other depository; (iii) a; (c) an administrative processing charge of \$50; and (iv) (d) reasonable attorney's attorney fees if awarded by the court.

B. Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, any holder of a check, draft, or order, payment of which has been refused by the drawee for insufficient funds or credit or because of a stop-payment order placed in bad faith, or any person authorized to receive an electronic payment, payment of which is not completed because it is declined, reversed, or otherwise rejected by the financial institution or other entity responsible for the payment or because of a stop-payment order placed in bad faith, who charges the drawer or person who authorized the electronic payment amounts in excess of those authorized in subsection A on account of payment being so refused shall, upon demand, be liable to the drawer or person who authorized the electronic payment for the lesser of (i) \$50 plus the excess of the authorized amount or (ii) twice the amount charged in excess of the authorized amount.

§ 8.01-27.2. Civil recovery for giving bad check, electronic payment, etc.

Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, in the event a check, draft, or order, the payment of which has been refused by the drawee because of lack of funds in or credit with such drawee, or an electronic payment, the payment of which is not completed because it is declined, reversed, or otherwise rejected by the financial institution or other entity responsible for the payment, is not paid in full within thirty 30 days after receipt by the drawer of (i) written notice by registered, certified, or regular mail with the sender retaining an affidavit of service of mailing or other sufficient proof of mailing, which may be a U.S. Postal Certificate of Mailing or (ii) if for nonpayment of rent under § 55-225 or 55-248.31, written notice in accordance therewith, from the payee that the check, draft, or order has been returned unpaid or the electronic payment is not completed because it is declined, reversed, or otherwise rejected, the payee may recover from the drawer or person who authorized the electronic payment in a civil action brought by the filing of a warrant in debt or, if applicable, an unlawful detainer, the lesser of \$250 or three times the amount of the check, draft or order, or electronic payment. The amount recovered as authorized by this section shall be in addition to the amounts authorized for recovery under § 8.01-27.1. No action may be initiated under this section if any action has been initiated under § 18.2-181. The drawer or person who authorized the electronic payment shall be obligated to pay the cost of service and the cost of mailing, as applicable.

§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general

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59 district court.

60 A. In any case when possession of any house, land, or tenement is unlawfully detained by the person
61 in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may
62 present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts
63 which authorize the removal of the tenant or other person in possession, describing such premises; and
64 thereupon such magistrate, clerk, or judge shall issue his summons against the person or persons named
65 in such affidavit. The process issued upon any such summons issued by a magistrate, clerk, or judge
66 may be served as provided in § 8.01-293, 8.01-296, or 8.01-299. When issued by a magistrate it may be
67 returned to and the case heard and determined by the judge of a general district court. If the summons
68 for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord Tenant
69 Act (§ 55-248.2 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not
70 more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of
71 filing, the initial hearing shall be held as soon as practicable. If the plaintiff requests that the initial
72 hearing be set on a date later than 21 days from the date of filing, the initial hearing shall be set on a
73 date the plaintiff is available that is also available for the court. Such summons shall be served at least
74 10 days before the return day thereof.

75 B. Notwithstanding any other rule of court or provision of law to the contrary, the plaintiff in an
76 unlawful detainer case may submit into evidence a photocopy of a properly executed paper document or
77 paper printout of an electronically stored document including a copy of the original lease or other
78 documents, provided that the plaintiff provides an affidavit or sworn testimony that the copy of such
79 document is a true and accurate copy of the original lease. *An attorney or agent of the landlord or*
80 *managing agent may present such affidavit into evidence.*

81 C. *Notwithstanding any other rule of court or provision of law to the contrary, the plaintiff or the*
82 *plaintiff's attorney or agent may include in the affidavit entered into evidence pursuant to subsection B a*
83 *statement of the amount of all outstanding rent, late charges, attorney fees, and any other charges or*
84 *damages due as of the date of the hearing. Upon request of the plaintiff or the plaintiff's attorney or*
85 *agent, if the court determines that the affidavit accurately sets forth the amount due the plaintiff, the*
86 *court shall enter a judgment for such amount in addition to entering an order of possession for the*
87 *premises.*

88 **§ 8.01-471. Time period for issuing writs of possession in unlawful entry and detainer; when**
89 **returnable.**

90 Writs of possession, in case of unlawful entry and detainer, shall be issued within one year from the
91 date of judgment for possession and shall be made returnable within 30 days from the date of issuing
92 the writ. No writ shall issue, however, in cases under the Virginia Residential Landlord and Tenant Act
93 (§ 55-248.2 et seq.) if, following the entry of judgment, the landlord has accepted rent payments without
94 reservation, as described in § 55-248.34:1. *A writ of possession may be requested by the plaintiff or the*
95 *plaintiff's attorney or agent.*

96 **§ 17.1-626.1. Recovery of costs in civil actions for bad checks or electronic payments.**

97 A. In any civil action by a holder to recover the sum payable of a check drawn by the defendant on
98 which payment has been refused by the payor bank because the drawer had no account or insufficient
99 funds *or by a person authorized to receive an electronic payment from a person who authorized such*
100 *electronic payment where the payment is not completed because it is declined, reversed, or otherwise*
101 *rejected*, or in any civil action following an arrest under § 18.2-181 or 18.2-182, the court, upon a
102 determination that the plaintiff has prevailed, shall add the following amounts, as costs, to the amount
103 due to the plaintiff for the check *or electronic payment*: (i) the sum of \$30 to defray the cost of
104 processing the returned check *or the incomplete electronic payment*; and (ii) the base wage of one
105 employee for time actually spent acting as a witness for the Commonwealth; provided, however, that the
106 total amount of allowable costs granted under the provisions of this section shall not exceed the sum of
107 \$250 excluding restitution for the amount of the check *or electronic payment*.

108 B. Such award of costs shall be contingent upon a finding (i) that the plaintiff complied with the
109 provisions in § 18.2-183 relating to notice and (ii) that the defendant failed to deliver payment or
110 evidence of bank error to the plaintiff within five days after receipt of such notice.