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## SENATE BILL NO. 354

Offered January 8, 2014

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*A BILL to amend and reenact § 55-248.31 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; expedited evictions for nonremediable breaches; continued disturbances of the peace.*

Patron—Edwards (By Request)

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:**

**1. That § 55-248.31 of the Code of Virginia is amended and reenacted as follows:**

**§ 55-248.31. Noncompliance with rental agreement; monetary penalty.**

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55-248.16 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case. *In the case of nonremediable breach.*

1. *If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the tenant specifying the acts or possessions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.*

2. *Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or rental agreement involves a criminal or willful act that is not remediable and that poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, (i) any illegal drug activity involving a controlled substance, as used or defined by the Drug*

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59 Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests  
60 or invitees or (ii) continued disturbances of the peace by the tenant, the tenant's authorized occupants,  
61 or the tenant's guests or invitees shall constitute an immediate nonremediable violation for which the  
62 landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any  
63 criminal offense that may arise out of the same actions. For the purpose of this section, "continued  
64 disturbances of the peace" means three or more separate incidents occurring during the term of the  
65 rental agreement that are documented by the landlord or another tenant residing at the premises. Such  
66 documentation shall include, but is not limited to, reports to the law-enforcement department for the  
67 county, city, or town in which the premises are situated or evidence of extensive damage to the premises  
68 rented to the tenant beyond usual and reasonable wear and tear, the building in which the premises are  
69 a part, or the premises or personal property of other tenants.

70 3. In order to obtain an order of possession from a court of competent jurisdiction terminating the  
71 tenancy for illegal drug activity, persistent disturbances of the peace, or any other action that involves  
72 or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance  
73 of the evidence. The landlord shall provide evidence by sworn statement executed before a notary public  
74 under the penalty of perjury for false statement. However, where the illegal drug activity or persistent  
75 disturbances of the peace are engaged in by a tenant's authorized occupants, or a tenant's guests or  
76 invitees, the tenant shall be presumed to have knowledge of such illegal drug activity or persistent  
77 disturbances of the peace, unless the presumption is rebutted by a preponderance of the evidence.

78 4. The initial hearing on the landlord's action for immediate possession of the premises shall be held  
79 within 15 calendar days from the date of service on the tenant; however, the court shall order an  
80 earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an  
81 immediate threat to the health and safety of other tenants. After the initial hearing, if the matter is  
82 scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall  
83 order the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall  
84 be heard no later than 30 days from the date of service on the tenant. During the interim period  
85 between the date of the initial hearing and the date of any subsequent hearing or contested trial, the  
86 court may afford any further remedy or relief as is necessary to protect the interests of the parties to  
87 the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold  
88 either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

89 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling  
90 unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55-248.31:01  
91 based upon information provided by the tenant to the landlord, or by a protective order from a court of  
92 competent jurisdiction pursuant to § 16.1-253.1, 16.1-279.1, or subsection B of § 20-103, the lease shall  
93 not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not  
94 be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a  
95 victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days  
96 from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation  
97 of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the  
98 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a  
99 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the  
100 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the  
101 tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions  
102 of this subsection are not applicable, the tenant shall remain responsible for the acts of the other  
103 co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16, and is subject to  
104 termination of the tenancy pursuant to the lease and this chapter.

105 E. If the tenant has been served with a prior written notice which required the tenant to remedy a  
106 breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent  
107 breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant  
108 specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach  
109 of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days  
110 after receipt of the notice.

111 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is  
112 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the  
113 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental  
114 agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a check for  
115 rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds  
116 transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad  
117 faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is  
118 served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the  
119 rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed  
120 electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and

121 proceed to obtain possession of the premises as provided in § 55-248.35. Nothing shall be construed to  
122 prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery  
123 under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to  
124 § 8.01-126, provided the landlord has given notice in accordance with § 55-248.6, which notice may be  
125 included in the five-day termination notice provided in accordance with this section.

126 G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief  
127 for any noncompliance by the tenant with the rental agreement or § 55-248.16. The landlord shall be  
128 entitled to recover reasonable attorney fees unless the tenant proves by a preponderance of the evidence  
129 that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement  
130 provides for the payment of reasonable attorney fees in the event of a breach of the agreement or  
131 noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award  
132 reasonable attorney fees in any action based upon the tenancy in which the landlord prevails, including  
133 but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of  
134 any previous action to obtain possession or rent, unless in any such action, the tenant proves by a  
135 preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable.

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