

21101428D

**HOUSE BILL NO. 1908**

Offered January 13, 2021

Prefiled January 9, 2021

*A BILL to amend and reenact § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; noncompliance with rental agreement; prohibition on using negative credit information that arose during a closure of the United States Government against certain applicants for tenancy; penalty.*

Patrons—Helmer, Convirs-Fowler, Guy, Hayes, Jenkins, Cole, J.G., Cole, M.L., Murphy and Price

Referred to Committee on General Laws

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

**1. That § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:**

**§ 55.1-1245. (Effective until March 1, 2021) Noncompliance with rental agreement; monetary penalty.**

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 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 that 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, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a 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, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of the tenant 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 activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities 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 that 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 calendar 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 in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on the basis of information provided by the tenant to the landlord, or by a protective order from a court of

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59 competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease  
60 shall not terminate solely due to an act of family abuse against the tenant. However, these provisions  
61 shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's  
62 status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later  
63 than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises,  
64 in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the  
65 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a  
66 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the  
67 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the  
68 tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this  
69 subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants,  
70 authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the  
71 tenancy pursuant to the lease and this chapter.

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

78 F. For a landlord who owns four or fewer rental dwelling units, if rent is unpaid when due, and the  
79 tenant fails to pay rent within 14 days after written notice is served on him notifying the tenant of his  
80 nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid  
81 within the 14-day period, the landlord may terminate the rental agreement and proceed to obtain  
82 possession of the premises as provided in § 55.1-1251.

83 For a landlord who owns more than four rental dwelling units or more than a 10 percent interest in  
84 more than four rental dwelling units, whether individually or through a business entity, in the  
85 Commonwealth, if rent is unpaid when due, the landlord shall serve upon the tenant a written notice  
86 informing the tenant of the total amount due and owed. The written notice shall also offer the tenant a  
87 payment plan under which the tenant shall be required to pay the total amount due and owed in equal  
88 monthly installments over a period of the lesser of six months or the time remaining under the rental  
89 agreement. The total amount due and owed under a payment plan shall not include any late fees, and no  
90 late fees shall be assessed during any time period in which a tenant is making timely payments under a  
91 payment plan. This notice shall also inform the tenant that if the tenant fails to either pay the total  
92 amount due and owed or enter into the payment plan offered, or an alternative payment arrangement  
93 acceptable to the landlord, within 14 days of receiving the written notice from the landlord, the landlord  
94 may terminate the rental agreement and proceed to obtain possession of the premises as provided in §  
95 55.1-1251. If the tenant fails to pay in full or enter into a payment plan with the landlord within 14  
96 days of when the notice is served on him, the landlord may terminate the rental agreement and proceed  
97 to obtain possession of the premises as provided in § 55.1-1251. If the tenant enters into a payment plan  
98 and after the plan becomes effective, fails to pay any installment required by the plan within 14 days of  
99 its due date, the landlord may terminate the rental agreement and proceed to obtain possession of the  
100 premises as provided in § 55.1-1251, provided that he has sent the tenant a new notice advising the  
101 tenant that the rental agreement will terminate unless the tenant pays the total amount due and owed as  
102 stated on the notice within 14 days of receipt. The option of entering into a payment plan or alternative  
103 payment arrangement pursuant to this subsection may only be utilized once during the time period of the  
104 rental agreement. Nothing in this subsection shall preclude a tenant from availing himself of any other  
105 rights or remedies available to him under the law, nor shall the tenant's eligibility to participate or  
106 participation in any rent relief program offered by a nonprofit organization or under the provisions of  
107 any federal, state, or local law, regulation, or action prohibit the tenant from taking advantage of the  
108 provisions of this subsection.

109 G. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if  
110 an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has  
111 been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after  
112 written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to  
113 terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a  
114 completed electronic funds transfer within the five-day period, the landlord may terminate the rental  
115 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall  
116 be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or  
117 civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed  
118 pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202,  
119 which notice may be included in the five-day termination notice provided in accordance with this  
120 section.

H. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

I. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

J. 1. As used in this subdivision:

"Closure of the United States government" means the same as that term is defined in § 44-209.

"Directly affected individual" means an individual who was furloughed or otherwise did not receive payments as a result of a closure of the United States government and was (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government.

2. A landlord who owns more than four rental dwelling units or more than a 10 percent interest in more than four rental dwelling units, whether individually or through a business entity, in the Commonwealth, shall not take any adverse action, as defined in 15 U.S.C. § 1681a(k), against an applicant for tenancy based solely on payment history or an eviction for nonpayment of rent that occurred during a closure of the United States government when such applicant was a directly affected individual.

3. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was based solely on payment history or an eviction based on nonpayment of rent that occurred during a closure of the United States government when such applicant was a directly affected individual. The written notice of denial shall include the statewide legal aid telephone number and website address and shall inform the applicant that he must assert his right to challenge the denial within seven days of the postmark date. If the landlord does not receive a response from the applicant within seven days of the postmark date, the landlord may proceed. If, in addition to the written notice, the landlord provides notice to the applicant by electronic or telephonic means using an email address, telephone number, or other contact information provided by the applicant informing the applicant of his denial and right to assert that his failure to qualify was based solely on payment history or an eviction based on nonpayment of rent that occurred during a closure of the United States government when such applicant was a directly affected individual, and the tenant does not make such assertion that the failure to qualify was the result of such payment history or eviction prior to the close of business on the next business day, the landlord may proceed. The landlord must be able to validate the date and time that any communication sent by electronic or telephonic means was sent to the applicant. If a landlord does receive a response from the applicant asserting such a right, and the landlord relied upon a consumer or tenant screening report, the landlord shall make a good faith effort to contact the generator of the report to ascertain whether such determination was due solely to the applicant for tenancy's payment history or an eviction for nonpayment of rent that occurred during a closure of the United States government and that such applicant was a directly affected individual. If the landlord does not receive a response from the generator of the report within three business days of requesting the information, the landlord may proceed with using the information from the report without additional action.

4. If such a landlord does not comply with the provisions of this subsection, the applicant for tenancy may recover statutory damages of \$1,000, along with attorney fees.

**§ 55.1-1245. (Effective March 1, 2021, until July 1, 2021) Noncompliance with rental agreement; monetary penalty.**

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 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

182 receipt of the notice if the breach is not remedied in 21 days and that the rental agreement shall  
183 terminate as provided in the notice.

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

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

217 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling  
218 unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on  
219 the basis of information provided by the tenant to the landlord, or by a protective order from a court of  
220 competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease  
221 shall not terminate solely due to an act of family abuse against the tenant. However, these provisions  
222 shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's  
223 status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later  
224 than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises,  
225 in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the  
226 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a  
227 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the  
228 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the  
229 tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this  
230 subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants,  
231 authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the  
232 tenancy pursuant to the lease and this chapter.

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

239 F. For a landlord who owns four or fewer rental dwelling units, if rent is unpaid when due, and the  
240 tenant fails to pay rent within 14 days after written notice is served on him notifying the tenant of his  
241 nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid  
242 within the 14-day period, the landlord may terminate the rental agreement and proceed to obtain  
243 possession of the premises as provided in § 55.1-1251.

For a landlord who owns more than four rental dwelling units or more than a 10 percent interest in more than four rental dwelling units, whether individually or through a business entity, in the Commonwealth, if rent is unpaid when due, the landlord shall serve upon the tenant a written notice informing the tenant of the total amount due and owed. The written notice shall also offer the tenant a payment plan under which the tenant shall be required to pay the total amount due and owed in equal monthly installments over a period of the lesser of six months or the time remaining under the rental agreement. The total amount due and owed under a payment plan shall not include any late fees, and no late fees shall be assessed during any time period in which a tenant is making timely payments under a payment plan. This notice shall also inform the tenant that if the tenant fails to either pay the total amount due and owed or enter into the payment plan offered, or an alternative payment arrangement acceptable to the landlord, within 14 days of receiving the written notice from the landlord, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If the tenant fails to pay in full or enter into a payment plan with the landlord within 14 days of when the notice is served on him, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If the tenant enters into a payment plan and after the plan becomes effective, fails to pay any installment required by the plan within 14 days of its due date, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251, provided that he has sent the tenant a new notice advising the tenant that the rental agreement will terminate unless the tenant pays the total amount due and owed as stated on the notice within 14 days of receipt. The option of entering into a payment plan or alternative payment arrangement pursuant to this subsection may only be utilized once during the time period of the rental agreement. Nothing in this subsection shall preclude a tenant from availing himself of any other rights or remedies available to him under the law, nor shall the tenant's eligibility to participate or participation in any rent relief program offered by a nonprofit organization or under the provisions of any federal, state, or local law, regulation, or action prohibit the tenant from taking advantage of the provisions of this subsection.

G. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202, which notice may be included in the five-day termination notice provided in accordance with this section.

H. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

I. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

J. 1. As used in this subdivision:

"Closure of the United States government" means the same as that term is defined in § 44-209.

"Directly affected individual" means an individual who was furloughed or otherwise did not receive payments as a result of a closure of the United States government and was (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an

employee of a company under contract with the United States government.

2. A landlord who owns more than four rental dwelling units or more than a 10 percent interest in more than four rental dwelling units, whether individually or through a business entity, in the Commonwealth, shall not take any adverse action, as defined in 15 U.S.C. § 1681a(k), against an applicant for tenancy based solely on payment history or an eviction for nonpayment of rent that occurred during (i) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic or (ii) a closure of the United States government when such applicant was a directly affected individual.

3. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was based ~~upon~~ solely on payment history or an eviction based on nonpayment of rent that occurred during (i) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic or (ii) a closure of the United States government when such applicant was a directly affected individual. The written notice of denial shall include the statewide legal aid telephone number and website address and shall inform the applicant that he must assert his right to challenge the denial within seven days of the postmark date. If the landlord does not receive a response from the applicant within seven days of the postmark date, the landlord may proceed. If, in addition to the written notice, the landlord provides notice to the applicant by electronic or telephonic means using an email address, telephone number, or other contact information provided by the applicant informing the applicant of his denial and right to assert that his failure to qualify was based ~~upon~~ solely on payment history or an eviction based on nonpayment of rent that occurred during (a) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic or (b) a closure of the United States government when such applicant was a directly affected individual, and the tenant does not make such assertion that the failure to qualify was the result of such payment history or eviction prior to the close of business on the next business day, the landlord may proceed. The landlord must be able to validate the date and time that any communication sent by electronic or telephonic means was sent to the applicant. If a landlord does receive a response from the applicant asserting such a right, and the landlord relied upon a consumer or tenant screening report, the landlord shall make a good faith effort to contact the generator of the report to ascertain whether such determination was due solely to the applicant for tenancy's payment history or an eviction for nonpayment that occurred during (1) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic or (2) a closure of the United States government and that such applicant was a directly affected individual. If the landlord does not receive a response from the generator of the report within three business days of requesting the information, the landlord may proceed with using the information from the report without additional action.

4. If such a landlord does not comply with the provisions of this subsection, the applicant for tenancy may recover statutory damages of \$1,000, along with attorney fees.

**§ 55.1-1245. (Effective July 1, 2021, until the later of July 1, 2028, or seven years after the COVID-19 pandemic state of emergency expires) Noncompliance with rental agreement; monetary penalty.**

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 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 that 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, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a 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, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of the tenant 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 activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities 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 that 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 calendar 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 in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on the basis of information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate solely due to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the tenancy pursuant to the lease and this chapter.

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

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and

fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

I. 1. As used in this subdivision:

"Closure of the United States government" means the same as that term is defined in § 44-209.

"Directly affected individual" means an individual who was furloughed or otherwise did not receive payments as a result of a closure of the United States government and was (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government.

2. A landlord who owns more than four rental dwelling units or more than a 10 percent interest in more than four rental dwelling units, whether individually or through a business entity, in the Commonwealth, shall not take any adverse action, as defined in 15 U.S.C. § 1681a(k), against an applicant for tenancy based solely on payment history or an eviction for nonpayment of rent that occurred during (i) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic or (ii) a closure of the United States government when such applicant was a directly affected individual.

3. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was based ~~upon~~ solely on payment history or an eviction based on nonpayment of rent that occurred during (i) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic or (ii) a closure of the United States government when such applicant was a directly affected individual. The written notice of denial shall include the statewide legal aid telephone number and website address and shall inform the applicant that he must assert his right to challenge the denial within seven days of the postmark date. If the landlord does not receive a response from the applicant within seven days of the postmark date, the landlord may proceed. If, in addition to the written notice, the landlord provides notice to the applicant by electronic or telephonic means using an email address, telephone number, or other contact information provided by the applicant informing the applicant of his denial and right to assert that his failure to qualify was based ~~upon~~ solely on payment history or an eviction based on nonpayment of rent that occurred during (a) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic or (b) a closure of the United States government when such applicant was a directly affected individual, and the tenant does not make such assertion that the failure to qualify was ~~the result of~~ based on such payment history or eviction prior to the close of business on the next business day, the landlord may proceed. The landlord must be able to validate the date and time that any communication sent by electronic or telephonic means was sent to the applicant. If a landlord does receive a response from the applicant asserting such a right, and the landlord relied upon a consumer or tenant screening report, the landlord shall make a good faith effort to contact the generator of the report to ascertain whether such determination was due solely to the applicant for tenancy's payment history or an eviction for nonpayment that occurred during (1) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic or (2) a closure of the United States government and that such applicant was a directly affected individual. If the landlord does not receive a response from the generator of the report within three business days of requesting the information, the landlord may proceed with using the information from the report without additional action.

4. If such a landlord does not comply with the provisions of this subsection, the applicant for tenancy may recover statutory damages of \$1,000, along with attorney fees.

**§ 55.1-1245. (Effective the later of July 1, 2028, or 7 years after the COVID-19 pandemic state of emergency expires) Noncompliance with rental agreement; monetary penalty.**

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 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 that 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, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a 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, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of the tenant 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 activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities 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 that 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 calendar 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 in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on the basis of information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate solely due to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the tenancy pursuant to the lease and this chapter.

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

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental

agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

*I. 1. As used in this subdivision:*

*"Closure of the United States government" means the same as that term is defined in § 44-209.*

*"Directly affected individual" means an individual who was furloughed or otherwise did not receive payments as a result of a closure of the United States government and was (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government.*

*2. A landlord who owns more than four rental dwelling units or more than a 10 percent interest in more than four rental dwelling units, whether individually or through a business entity, in the Commonwealth, shall not take any adverse action, as defined in 15 U.S.C. § 1681a(k), against an applicant for tenancy based solely on payment history or an eviction for nonpayment of rent that occurred during a closure of the United States government when such applicant was a directly affected individual.*

*3. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was based solely on payment history or an eviction based on nonpayment of rent that occurred during a closure of the United States government when such applicant was a directly affected individual. The written notice of denial shall include the statewide legal aid telephone number and website address and shall inform the applicant that he must assert his right to challenge the denial within seven days of the postmark date. If the landlord does not receive a response from the applicant within seven days of the postmark date, the landlord may proceed. If, in addition to the written notice, the landlord provides notice to the applicant by electronic or telephonic means using an email address, telephone number, or other contact information provided by the applicant informing the applicant of his denial and right to assert that his failure to qualify was based solely on payment history or an eviction based on nonpayment of rent that occurred during a closure of the United States government when such applicant was a directly affected individual, and the tenant does not make such assertion that the failure to qualify was the result of such payment history or eviction prior to the close of business on the next business day, the landlord may proceed. The landlord must be able to validate the date and time that any communication sent by electronic or telephonic means was sent to the applicant. If a landlord does receive a response from the applicant asserting such a right, and the landlord relied upon a consumer or tenant screening report, the landlord shall make a good faith effort to contact the generator of the report to ascertain whether such determination was due solely to the applicant for tenancy's payment history or an eviction for nonpayment of rent that occurred during a closure of the United States*

613 government and that such applicant was a directly affected individual. If the landlord does not receive a  
614 response from the generator of the report within three business days of requesting the information, the  
615 landlord may proceed with using the information from the report without additional action.  
616 4. If such a landlord does not comply with the provisions of this subsection, the applicant for  
617 tenancy may recover statutory damages of \$1,000, along with attorney fees.