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.

Referred to Committee on General Laws

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

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Be it enacted by the General Assembly of Virginia:

13 1. That § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of 14 Virginia is amended and reenacted as follows:

15 § 55.1-1245. (Effective until March 1, 2021) Noncompliance with rental agreement; monetary 16 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.

26 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on 27 the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement 28 will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to 29 the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement 30 involves or constitutes a criminal or a willful act that is not remediable and that poses a threat to health 31 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 32 33 substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that 34 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 35 36 nonremediable violation for which the landlord may proceed to terminate the tenancy without the 37 necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In 38 order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for 39 illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that 40 also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance 41 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 42 occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such 43 activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on 44 the landlord's action for immediate possession of the premises shall be held within 15 calendar days 45 from the date of service on the tenant; however, the court shall order an earlier hearing when emergency 46 47 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 48 49 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 50 51 days from the date of service on the tenant. During the interim period between the date of the initial 52 hearing and the date of any subsequent hearing or contested trial, the court may afford any further 53 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 54 55 time limits set out in this section shall not be a basis for dismissal of the case.

56 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling 57 unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on 58 the basis of information provided by the tenant to the landlord, or by a protective order from a court of HB1908

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 shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's 61 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, in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the 64 65 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 66 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the 67 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, authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the 70 71 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. For a landlord who owns four or fewer rental dwelling units, if rent is unpaid when due, and the tenant fails to pay rent within 14 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 14-day period, the landlord may terminate the rental agreement and proceed to obtain 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 payment plan under which the tenant shall be required to pay the total amount due and owed in equal 87 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 days of when the notice is served on him, the landlord may terminate the rental agreement and proceed 96 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 premises as provided in § 55.1-1251, provided that he has sent the tenant a new notice advising the 100 101 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 102 103 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 104 105 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 106 107 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 written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to 112 113 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 114 115 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 116 117 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, 118 119 which notice may be included in the five-day termination notice provided in accordance with this 120 section.

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121 H. Except as otherwise provided in this chapter, the landlord may recover damages and obtain 122 injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the 123 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 124 125 from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and 126 fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, 127 (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of 128 the proceeding as contracted for in the rental agreement or as provided by law only if court action has 129 been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

130 I. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or 131 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the 132 landlord and against the tenant for the relief requested, which may include the following: (i) rent due 133 and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as 134 contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) 135 reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any 136 such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or 137 vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as 138 provided by law; and (vi) damages to the dwelling unit or premises.

139 J. 1. As used in this subdivision: 140 "Closure of the United States go

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

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

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

151 3. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the 152 applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was 153 based solely on payment history or an eviction based on nonpayment of rent that occurred during a 154 closure of the United States government when such applicant was a directly affected individual. The 155 written notice of denial shall include the statewide legal aid telephone number and website address and 156 shall inform the applicant that he must assert his right to challenge the denial within seven days of the 157 postmark date. If the landlord does not receive a response from the applicant within seven days of the 158 postmark date, the landlord may proceed. If, in addition to the written notice, the landlord provides 159 notice to the applicant by electronic or telephonic means using an email address, telephone number, or 160 other contact information provided by the applicant informing the applicant of his denial and right to 161 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 162 163 was a directly affected individual, and the tenant does not make such assertion that the failure to qualify 164 was the result of such payment history or eviction prior to the close of business on the next business 165 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 166 167 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 168 report to ascertain whether such determination was due solely to the applicant for tenancy's payment 169 170 history or an eviction for nonpayment of rent that occurred during a closure of the United States 171 government and that such applicant was a directly affected individual. If the landlord does not receive a 172 response from the generator of the report within three business days of requesting the information, the 173 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 shall183 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
adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not
terminate.

187 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 188 189 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 of the premises. For purposes of this subsection, any illegal drug activity involving a controlled 193 194 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 195 196 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 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 203 204 activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on 205 the landlord's action for immediate possession of the premises shall be held within 15 calendar days 206 207 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 the basis of information provided by the tenant to the landlord, or by a protective order from a court of 219 competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease 220 221 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.

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. For a landlord who owns four or fewer rental dwelling units, if rent is unpaid when due, and the tenant fails to pay rent within 14 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 14-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251.

244 For a landlord who owns more than four rental dwelling units or more than a 10 percent interest in 245 more than four rental dwelling units, whether individually or through a business entity, in the 246 Commonwealth, if rent is unpaid when due, the landlord shall serve upon the tenant a written notice 247 informing the tenant of the total amount due and owed. The written notice shall also offer the tenant a 248 payment plan under which the tenant shall be required to pay the total amount due and owed in equal 249 monthly installments over a period of the lesser of six months or the time remaining under the rental 250 agreement. The total amount due and owed under a payment plan shall not include any late fees, and no 251 late fees shall be assessed during any time period in which a tenant is making timely payments under a 252 payment plan. This notice shall also inform the tenant that if the tenant fails to either pay the total 253 amount due and owed or enter into the payment plan offered, or an alternative payment arrangement 254 acceptable to the landlord, within 14 days of receiving the written notice from the landlord, the landlord 255 may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 256 55.1-1251. If the tenant fails to pay in full or enter into a payment plan with the landlord within 14 257 days of when the notice is served on him, the landlord may terminate the rental agreement and proceed 258 to obtain possession of the premises as provided in § 55.1-1251. If the tenant enters into a payment plan 259 and after the plan becomes effective, fails to pay any installment required by the plan within 14 days of 260 its due date, the landlord may terminate the rental agreement and proceed to obtain possession of the 261 premises as provided in § 55.1-1251, provided that he has sent the tenant a new notice advising the 262 tenant that the rental agreement will terminate unless the tenant pays the total amount due and owed as 263 stated on the notice within 14 days of receipt. The option of entering into a payment plan or alternative 264 payment arrangement pursuant to this subsection may only be utilized once during the time period of the 265 rental agreement. Nothing in this subsection shall preclude a tenant from availing himself of any other 266 rights or remedies available to him under the law, nor shall the tenant's eligibility to participate or 267 participation in any rent relief program offered by a nonprofit organization or under the provisions of 268 any federal, state, or local law, regulation, or action prohibit the tenant from taking advantage of the 269 provisions of this subsection.

270 G. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if 271 an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has 272 been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after 273 written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to 274 terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a 275 completed electronic funds transfer within the five-day period, the landlord may terminate the rental 276 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall 277 be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or 278 civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed 279 pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202, 280 which notice may be included in the five-day termination notice provided in accordance with this 281 section.

282 H. Except as otherwise provided in this chapter, the landlord may recover damages and obtain 283 injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the 284 event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled 285 to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained 286 from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and 287 fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, 288 (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of 289 the proceeding as contracted for in the rental agreement or as provided by law only if court action has 290 been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

291 I. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or 292 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the 293 landlord and against the tenant for the relief requested, which may include the following: (i) rent due 294 and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as 295 contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) 296 reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any 297 such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or 298 vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as 299 provided by law; and (vi) damages to the dwelling unit or premises.

300 J. 1. As used in this subdivision:

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

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

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305 *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 elated to the COVID-19 pandemic or (ii) a closure of the United States government when such applicant was a directly affected individual.

313 2. 3. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the 314 applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was 315 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 316 317 any state of emergency related to the COVID-19 pandemic or (ii) a closure of the United States 318 government when such applicant was a directly affected individual. The written notice of denial shall 319 include the statewide legal aid telephone number and website address and shall inform the applicant that 320 he must assert his right to challenge the denial within seven days of the postmark date. If the landlord 321 does not receive a response from the applicant within seven days of the postmark date, the landlord may 322 proceed. If, in addition to the written notice, the landlord provides notice to the applicant by electronic 323 or telephonic means using an email address, telephone number, or other contact information provided by 324 the applicant informing the applicant of his denial and right to assert that his failure to qualify was 325 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 326 any state of emergency related to the COVID-19 pandemic or (b) a closure of the United States 327 government when such applicant was a directly affected individual, and the tenant does not make such 328 329 assertion that the failure to qualify was the result of such payment history or eviction prior to the close 330 of business on the next business day, the landlord may proceed. The landlord must be able to validate 331 the date and time that any communication sent by electronic or telephonic means was sent to the 332 applicant. If a landlord does receive a response from the applicant asserting such a right, and the 333 landlord relied upon a consumer or tenant screening report, the landlord shall make a good faith effort 334 to contact the generator of the report to ascertain whether such determination was due solely to the 335 applicant for tenancy's payment history or an eviction for nonpayment that occurred during (1) the 336 period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state 337 of emergency declared by the Governor related to the COVID-19 pandemic or (2) a closure of the 338 United States government and that such applicant was a directly affected individual. If the landlord does 339 not receive a response from the generator of the report within three business days of requesting the 340 information, the landlord may proceed with using the information from the report without additional 341 action.

342 3. 4. If such a landlord does not comply with the provisions of this subsection, the applicant for
 343 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.

356 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on 357 the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement 358 will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to 359 the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement 360 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 361 of the premises. For purposes of this subsection, any illegal drug activity involving a controlled 362 substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that 363 364 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 365 366 nonremediable violation for which the landlord may proceed to terminate the tenancy without the

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367 necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In 368 order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for 369 illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that 370 also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance 371 of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a 372 criminal or willful act that also poses a threat to health and safety is engaged in by an authorized 373 occupant or a guest or invite of the tenant, the tenant shall be presumed to have knowledge of such 374 activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on 375 the landlord's action for immediate possession of the premises shall be held within 15 calendar days 376 from the date of service on the tenant; however, the court shall order an earlier hearing when emergency 377 conditions are alleged to exist upon the premises that constitute an immediate threat to the health or 378 safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing 379 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 380 381 days from the date of service on the tenant. During the interim period between the date of the initial 382 hearing and the date of any subsequent hearing or contested trial, the court may afford any further 383 remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of 384 any other tenant residing on the premises. Failure by the court to hold either of the hearings within the 385 time limits set out in this section shall not be a basis for dismissal of the case.

386 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling 387 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 388 389 competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease 390 shall not terminate solely due to an act of family abuse against the tenant. However, these provisions 391 shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's 392 status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later 393 than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, 394 in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the 395 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a 396 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the 397 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the 398 tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this 399 subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, 400 authorized occupants, or guests or invitees pursuant to \$55.1-1227 and is subject to termination of the 401 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.

408 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is 409 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the 410 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental 411 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for 412 rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds 413 transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad 414 faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is 415 served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the 416 rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed 417 electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and 418 proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to 419 prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery 420 under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to 421 § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202, which notice 422 may be included in the five-day termination notice provided in accordance with this section.

423 G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain 424 injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the 425 event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled 426 to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained 427 from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and 441

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

432 H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or 433 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the 434 landlord and against the tenant for the relief requested, which may include the following: (i) rent due 435 and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as 436 contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) 437 reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any 438 such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or 439 vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as 440 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.

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

447
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 elated to the COVID-19 pandemic or (*ii*) *a closure of the United States government when such applicant was a directly affected individual*.

454 2. 3. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the 455 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 456 457 (i) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of 458 any state of emergency related to the COVID-19 pandemic or (ii) a closure of the United States 459 government when such applicant was a directly affected individual. The written notice of denial shall 460 include the statewide legal aid telephone number and website address and shall inform the applicant that 461 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 462 463 proceed. If, in addition to the written notice, the landlord provides notice to the applicant by electronic 464 or telephonic means using an email address, telephone number, or other contact information provided by 465 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 466 (a) the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of 467 468 any state of emergency related to the COVID-19 pandemic or (b) a closure of the United States 469 government when such applicant was a directly affected individual, and the tenant does not make such 470 assertion that the failure to qualify was the result of based on such payment history or eviction prior to 471 the close of business on the next business day, the landlord may proceed. The landlord must be able to 472 validate the date and time that any communication sent by electronic or telephonic means was sent to 473 the applicant. If a landlord does receive a response from the applicant asserting such a right, and the 474 landlord relied upon a consumer or tenant screening report, the landlord shall make a good faith effort 475 to contact the generator of the report to ascertain whether such determination was due solely to the 476 applicant for tenancy's payment history or an eviction for nonpayment that occurred during (1) the 477 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 478 479 United States government and that such applicant was a directly affected individual. If the landlord does 480 not receive a response from the generator of the report within three business days of requesting the 481 information, the landlord may proceed with using the information from the report without additional 482 action.

483 3. 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.

485 § 55.1-1245. (Effective the later of July 1, 2028, or 7 years after the COVID-19 pandemic state 486 of emergency expires) Noncompliance with rental agreement; monetary penalty.

487 A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant
488 with the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the
489 landlord may serve a written notice on the tenant specifying the acts and omissions constituting the

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490 breach and stating that the rental agreement will terminate upon a date not less than 30 days after491 receipt of the notice if the breach is not remedied in 21 days and that the rental agreement shall492 terminate as provided in the notice.

493 B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant494 adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not495 terminate.

496 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on 497 the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement 498 will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to 499 the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement 500 involves or constitutes a criminal or a willful act that is not remediable and that poses a threat to health 501 or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession 502 of the premises. For purposes of this subsection, any illegal drug activity involving a controlled 503 substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that 504 involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the 505 tenant, an authorized occupant, or a guest or invitee of the tenant shall constitute an immediate 506 nonremediable violation for which the landlord may proceed to terminate the tenancy without the 507 necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In 508 order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for 509 illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that 510 also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance 511 of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a 512 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 513 514 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 515 516 from the date of service on the tenant; however, the court shall order an earlier hearing when emergency 517 conditions are alleged to exist upon the premises that constitute an immediate threat to the health or 518 safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing 519 or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority 520 on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar 521 days from the date of service on the tenant. During the interim period between the date of the initial 522 hearing and the date of any subsequent hearing or contested trial, the court may afford any further 523 remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of 524 any other tenant residing on the premises. Failure by the court to hold either of the hearings within the 525 time limits set out in this section shall not be a basis for dismissal of the case.

526 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling 527 unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on 528 the basis of information provided by the tenant to the landlord, or by a protective order from a court of 529 competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease 530 shall not terminate solely due to an act of family abuse against the tenant. However, these provisions 531 shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's 532 status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later 533 than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, 534 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 535 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the 536 537 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the 538 tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this 539 subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, 540 authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the 541 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.

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

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551 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for 552 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 553 554 faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is 555 served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the 556 rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed 557 electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and 558 proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to 559 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 560 561 § 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. 562

563 G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain 564 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 565 to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained 566 from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and 567 568 fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, 569 (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of 570 the proceeding as contracted for in the rental agreement or as provided by law only if court action has 571 been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

572 H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or 573 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the 574 landlord and against the tenant for the relief requested, which may include the following: (i) rent due 575 and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as 576 contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) 577 reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any 578 such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or 579 vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as 580 provided by law; and (vi) damages to the dwelling unit or premises.

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584 payments as a result of a closure of the United States government and was (i) an employee of the
585 United States government, (ii) an independent contractor for the United States government, or (iii) an
586 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.

593 3. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the 594 applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was 595 based solely on payment history or an eviction based on nonpayment of rent that occurred during a 596 closure of the United States government when such applicant was a directly affected individual. The 597 written notice of denial shall include the statewide legal aid telephone number and website address and 598 shall inform the applicant that he must assert his right to challenge the denial within seven days of the 599 postmark date. If the landlord does not receive a response from the applicant within seven days of the 600 postmark date, the landlord may proceed. If, in addition to the written notice, the landlord provides 601 notice to the applicant by electronic or telephonic means using an email address, telephone number, or 602 other contact information provided by the applicant informing the applicant of his denial and right to 603 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 **604** 605 was a directly affected individual, and the tenant does not make such assertion that the failure to qualify 606 was the result of such payment history or eviction prior to the close of business on the next business 607 day, the landlord may proceed. The landlord must be able to validate the date and time that any 608 communication sent by electronic or telephonic means was sent to the applicant. If a landlord does 609 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 610 report to ascertain whether such determination was due solely to the applicant for tenancy's payment 611 612 history or an eviction for nonpayment of rent that occurred during a closure of the United States

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- 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.