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SENATE BILL NO. 354

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 20, 2014)

(Patron Prior to Substitute—Senator Edwards)

A *BILL to amend and reenact §§ 55-239 and 55-248.31 of the Code of Virginia, relating to landlord and tenant law; expedited evictions for nonremediable breaches; continued disturbances of the peace.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-239 and 55-248.31 of the Code of Virginia are amended and reenacted as follows:

§ 55-239. Proceedings to establish right of reentry, and judgment therefor; expedited eviction.

A. Any person who shall have a right of reentry into lands by reason of any rent issuing thereout being in arrear, or by reason of the breach of any covenant or condition, may serve a declaration in ejectment on the tenant in possession, when there shall be such tenant, or, if the possession be vacant, by affixing the declaration upon the chief door of any messuage, or at any other notorious place on the premises, and such service shall be in lieu of a demand and reentry; and upon proof to the court, by affidavit in case of judgment by default or upon proof on the trial, that the rent claimed was due and no sufficient distress was upon the premises, or that the covenant or condition was broken before the service of the declaration and that the plaintiff had power thereupon to reenter, he shall recover judgment and have execution for such lands.

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

2. *Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the lease involves a criminal or willful act that is not remediable and that poses a threat to health or safety, the landlord may terminate the lease immediately and proceed to obtain possession of the premises. For purposes of this subsection, (i) any illegal drug activity involving a controlled substance, as that term is used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or business invitees or (ii) continued disturbances of the peace by the tenant, the tenant's authorized occupants, or the tenant's guests or business invitees, shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions.*

3. *In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for persistent disturbances of the peace pursuant to subdivision 2, or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. The landlord shall provide evidence by sworn statement executed before a notary public under the penalty of perjury for false statement. However, where the illegal drug activity or continued disturbances of the peace are engaged in by a tenant's authorized occupants, or the tenant's guests or business invitees, the tenant shall be presumed to have knowledge of such illegal drug activity or continued disturbances of the peace, unless the presumption is rebutted by a preponderance of the evidence.*

4. *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 and 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 the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of the parties to the proceeding or the interests of any other tenant on the premises. Failure by the court to hold either of the hearings within the time limits set out in this subsection shall not be a basis for dismissal of the case.*

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

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

60 notice.

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

64 C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice
65 on the tenant specifying the acts and omissions constituting the breach and stating that the rental
66 agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding
67 anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations
68 under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not
69 remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement
70 immediately and proceed to obtain possession of the premises. For purposes of this subsection, any
71 illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act
72 (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees,
73 shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate
74 the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out
75 of the same actions. In order to obtain an order of possession from a court of competent jurisdiction
76 terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a
77 criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence.
78 However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or
79 invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the
80 presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action
81 for immediate possession of the premises shall be held within 15 calendar days from the date of service
82 on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged
83 to exist upon the premises which constitute an immediate threat to the health or safety of the other
84 tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested
85 trial, the court, to the extent practicable, shall order that the matter be given priority on the court's
86 docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of
87 service on the tenant. During the interim period between the date of the initial hearing and the date of
88 any subsequent hearing or contested trial, the court may afford any further remedy or relief as is
89 necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing
90 on the premises. Failure by the court to hold either of the hearings within the time limits set out herein
91 shall not be a basis for dismissal of the case. *In the case of nonremediable breach:*

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

95 2. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of
96 the tenant's obligations under this chapter or the rental agreement involves a criminal or willful act that
97 is not remediable and that poses a threat to health or safety, the landlord may terminate the rental
98 agreement immediately and proceed to obtain possession of the premises. For purposes of this
99 subsection, (i) any illegal drug activity involving a controlled substance, as that term is used or defined
100 by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the
101 tenant's guests or invitees or (ii) continued disturbances of the peace by the tenant, the tenant's
102 authorized occupants, or the tenant's guests or invitees shall constitute an immediate nonremediable
103 violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting
104 for a conviction of any criminal offense that may arise out of the same actions. For the purpose of this
105 section, "continued disturbances of the peace" means three or more separate incidents occurring during
106 the term of the rental agreement that are documented by the landlord or another tenant residing at the
107 premises. Such documentation shall include, but is not limited to, reports to the law-enforcement
108 department for the county, city, or town in which the premises are situated or evidence of extensive
109 damage to the premises rented to the tenant beyond usual and reasonable wear and tear, the building in
110 which the premises are a part, or the premises or personal property of other tenants.

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

119 4. The initial hearing on the landlord's action for immediate possession of the premises shall be held
120 within 15 calendar days from the date of service on the tenant; however, the court shall order an
121 earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an

122 immediate threat to the health and safety of other tenants. After the initial hearing, if the matter is
 123 scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall
 124 order the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall
 125 be heard no later than 30 days from the date of service on the tenant. During the interim period
 126 between the date of the initial hearing and the date of any subsequent hearing or contested trial, the
 127 court may afford any further remedy or relief as is necessary to protect the interests of the parties to
 128 the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold
 129 either of the hearings within the time limits set out in this subsection shall not be a basis for dismissal
 130 of the case.

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

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

153 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is
 154 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the
 155 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental
 156 agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a check for
 157 rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds
 158 transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad
 159 faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is
 160 served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the
 161 rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed
 162 electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and
 163 proceed to obtain possession of the premises as provided in § 55-248.35. Nothing shall be construed to
 164 prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery
 165 under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to
 166 § 8.01-126, provided the landlord has given notice in accordance with § 55-248.6, which notice may be
 167 included in the five-day termination notice provided in accordance with this section.

168 G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief
 169 for any noncompliance by the tenant with the rental agreement or § 55-248.16. The landlord shall be
 170 entitled to recover reasonable attorney fees unless the tenant proves by a preponderance of the evidence
 171 that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement
 172 provides for the payment of reasonable attorney fees in the event of a breach of the agreement or
 173 noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award
 174 reasonable attorney fees in any action based upon the tenancy in which the landlord prevails, including
 175 but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of
 176 any previous action to obtain possession or rent, unless in any such action, the tenant proves by a
 177 preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable.