

24106679D

HOUSE BILL NO. 598

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 6, 2024)

(Patrons Prior to Substitute—Delegates Price and Thomas [HB 196])

A BILL to amend and reenact §§ 8.01-126 and 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; landlord remedies; noncompliance with rental agreement.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-126 and 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

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

A. For the purposes of this section, "termination notice" means a notice given under § 55.1-1245 or other notice of termination of tenancy given by the landlord to the tenant of a dwelling unit, or any notice of termination given by a landlord to a tenant of a nonresidential premises.

B. In any case when possession of any house, land, or tenement is unlawfully detained by the person in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk, or judge shall issue his summons against the person or persons named in such affidavit. The process issued upon any such summons issued by a magistrate, clerk, or judge may be served as provided in § 8.01-293, 8.01-296, or 8.01-299. When issued by a magistrate it may be returned to and the case heard and determined by the judge of a general district court.

If the summons for unlawful detainer is filed to terminate a tenancy for *nonpayment of rent* pursuant to the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than ~~24~~ 14 days from the date of filing. If the case cannot be heard within ~~24~~ 14 days from the date of filing, the initial hearing shall be held as soon as practicable, but in no event later than ~~30~~ 21 days after the date of the filing. *If the summons for unlawful detainer is filed to terminate a tenancy for a reason other than nonpayment of rent pursuant to the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as soon as practicable, but in no event later than 30 days after the date of filing.*

If the plaintiff requests that the initial hearing be set on a date later than 21 days from the date of filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court. Such summons shall be served at least 10 days before the return day thereof.

C. Any summons issued pursuant to the provisions of this section shall contain a notice to the tenant that, pursuant to the provisions of § 18.2-465.1, it is unlawful for his employer to discharge him from employment or take any adverse personnel action against him as a result of his absence from employment due to appearing at any initial or subsequent hearing on such summons, provided that he has given reasonable notice of such hearing to his employer.

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

E. 1. Notwithstanding any other rule of court or provision of law to the contrary, when the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may submit into evidence by an affidavit or sworn testimony a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. The plaintiff or the plaintiff's attorney or agent shall advise the court of any payments by the defendant that result in a variance reducing the amount due the plaintiff as of the day of the hearing.

2. a. If the unlawful detainer summons served upon the defendant requests judgment for all amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the evidence and in accordance with the amounts contracted for in the rental agreement and shall enter a judgment for such amount due as of the date of the hearing in addition to entering an order of possession for the premises. Notwithstanding

HOUSE SUBSTITUTE

HB598H1

60 any rule of court or provision of law to the contrary, no order of possession shall be entered unless the
61 plaintiff or plaintiff's attorney or agent has presented a copy of a proper termination notice that the court
62 admits into evidence.

63 b. Notwithstanding any rule of court or provision of law to the contrary, a plaintiff may amend the
64 amount alleged to be due and owing in an unlawful detainer to request all amounts due and owing as of
65 the date of the hearing. If additional amounts become due and owing prior to the final disposition of a
66 pending unlawful detainer, the plaintiff may also amend the amount alleged to be due and owing to
67 include such additional amounts. If the plaintiff requests to amend the amount alleged to be due and
68 owing in an unlawful detainer, the judge shall grant such amendment. Upon amendment of the unlawful
69 detainer, such plaintiff shall not subsequently file an additional summons for unlawful detainer against
70 the defendant for such additional amounts if such additional amounts could have been included in such
71 amendment. If another unlawful detainer is filed, the court shall dismiss the subsequent unlawful
72 detainer. Nothing herein shall be construed to preclude a plaintiff from filing an unlawful detainer for a
73 non-rent violation during the pendency of an unlawful detainer for nonpayment of rent.

74 3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement
75 or lease provides that rent is due and payable on the first of the month in advance for the entire month,
76 at the request of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the
77 hearing shall include the rent due for the entire month in which the hearing is held, and rent shall not
78 be prorated as of the actual court date. Otherwise, the rent shall be prorated as of the date of the
79 hearing. However, nothing herein shall be construed to permit a landlord to collect rent in excess of the
80 amount stated in such rental agreement or lease. If a money judgment has been granted for the amount
81 due for the month of the hearing pursuant to this section and the landlord re-rents such dwelling unit
82 and receives rent from a new tenant prior to the end of such month, the landlord is required to reflect
83 the applicable portion of the judgment as satisfied pursuant to § 16.1-94.01.

84 4. If, on the date of a foreclosure sale of a single-family residential dwelling unit, the former owner
85 remains in possession of such dwelling unit, such former owner becomes a tenant at sufferance. Such
86 tenancy may be terminated by a written termination notice from the successor owner given to such
87 tenant at least three days prior to the effective date of termination. Upon the expiration of the three-day
88 period, the successor owner may file an unlawful detainer under this section. Such tenant shall be
89 responsible for payment of fair market rental from the date of such foreclosure until the date the tenant
90 vacates the dwelling unit, as well as damages, and for payment of reasonable attorney fees and court
91 costs.

92 **§ 55.1-1245. (Effective until the later of July 1, 2028, or seven years after the COVID-19**
93 **pandemic state of emergency expires) Noncompliance with rental agreement; monetary penalty.**

94 A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant
95 with the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the
96 landlord may serve a written notice on the tenant specifying the acts and omissions constituting the
97 breach and stating that the rental agreement will terminate upon a date not less than 30 days after
98 receipt of the notice if the breach is not remedied in 21 days and that the rental agreement shall
99 terminate as provided in the notice.

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

103 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on
104 the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement
105 will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to
106 the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement
107 involves or constitutes a criminal or a willful act that is not remediable and that poses a threat to health
108 or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession
109 of the premises. For purposes of this subsection, any illegal drug activity involving a controlled
110 substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that
111 involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the
112 tenant, an authorized occupant, or a guest or invitee of the tenant shall constitute an immediate
113 nonremediable violation for which the landlord may proceed to terminate the tenancy without the
114 necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In
115 order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for
116 illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that
117 also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance
118 of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a
119 criminal or willful act that also poses a threat to health and safety is engaged in by an authorized
120 occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such
121 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~~ 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 ~~five-day~~ 14-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~~ 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 by cash, cashier's check, certified check, or a completed electronic funds transfer within the ~~five-day~~ 14-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~~ 14-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. 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 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.

2. 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 payment history or an eviction based on nonpayment of rent that occurred during 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. 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 payment history or an eviction based on nonpayment of rent that occurred during 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 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 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. 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.

3. 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 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~~ 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 ~~five-day~~ 14-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~~ 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 by cash, cashier's check, certified check, or a completed electronic funds transfer within the ~~five-day~~ 14-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~~ 14-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

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

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