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HOUSE BILL NO. 1381

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Title 48 a chapter numbered 3, consisting of sections numbered 48-16 through 48-24, relating to nuisances.

Patrons—Crittenden, Almand, Christian, Diamonstein and Stump; Senators: Calhoun and Waddell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 48 a chapter numbered 3, consisting of sections numbered 48-16 through 48-24, as follows:

CHAPTER 3.

ABATING CERTAIN CRIMINAL ACTIVITY IN RESIDENTIAL HOUSING.

§ 48-16. Definitions.

When used in this chapter, unless expressly stated otherwise, all words shall have the same definitions as provided in the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) except:

"Community association" means a nonprofit community-based tenants' organization.

"Condominium association" means any association subject to the provisions of the Condominium Act (§ 55-79.39 et seq.).

"Drug-related criminal activity" means one of the following:

1. The felonious manufacture, sale, distribution, or possession with intent to manufacture, sell, or distribute, a controlled substance; or

2. The felonious use or possession (other than with intent to manufacture, sell or distribute), of a controlled substance, except that such felonious use or possession must have occurred within one year of the date the plaintiff provides notice to a defendant-tenant of an action under this chapter. Drug-related criminal activity does not include use or possession, if the defendant-tenant can demonstrate that he:

a. Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and

b. Has recovered from such addiction and does not currently use or possess controlled substances.

"Felonious" means that the criminal activity is classified as a felony under federal or state law.

"Landlord" means any landlord subject to the provisions of the Landlord and Tenant Act, (§ 55-217 et seq.), the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), the Manufactured Home Lot Rental Act (§ 55-248.41 et seq.), and the Virginia Real Estate Cooperative Act (§ 55-424 et seq.).

"Nuisance" means a property that is used for violent criminal activity or drug-related criminal activity.

"Property owners' association" means any association subject to the provisions of the Property Owners Association Act (§ 55-508 et seq.).

"Violent criminal activity" means any felonious criminal activity which is subject to the provisions of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2.

§ 48-17. Institution of action.

Upon review and approval by any Commonwealth's attorney, county attorney or city attorney, an attorney representative, condominium association, property owners' community association, or landlord may file a civil action to abate drug-related criminal activity or violent criminal activity in a circuit court of competent jurisdiction and venue.

§ 48-18. Notice.

In addition to any service of process required by § 8.01-296 and the Rules of the Supreme Court of Virginia, the plaintiff shall give notice in accordance with the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) by posting at a conspicuous place at the dwelling unit within forty-eight hours of filing the civil action, a notice stating the following:

1. The nature of the proceedings;

2. The time and place of the hearing; and

3. The name and telephone number of the person to contact for additional information.

§ 48-19. Response by defendant-tenant.

The defendant-tenant may file responsive pleadings in accordance with the Rules of the Supreme Court of Virginia; however, such pleadings shall be filed in writing prior to any hearing to be held in accordance with the provisions of this chapter.

§ 48-20. Remedies.

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60 A. In addition to any remedy available under this chapter, the court, after a hearing, may order a
61 tenant who knew or should have known of the existence of the nuisance to vacate the property within
62 seventy-two hours.

63 B. The court, after a hearing, may grant an order of possession in favor of the plaintiff if the court
64 deems appropriate.

65 C. If the court enters an order of possession in favor of the plaintiff under subsection B,
66 notwithstanding the provisions of Title 8.01, the court shall immediately issue its writ of possession to
67 the sheriff commanding execution of the writ within five days after its issuance.

68 D. The court may order the plaintiff to submit for court approval a plan of correction to ensure, to
69 the extent reasonably possible, that the property will not again be used for a nuisance as defined in this
70 chapter if:

71 1. The property owner is a party to the action; and

72 2. The property owner knew or should have known of the existence of the nuisance, and failed to
73 take the appropriate legal action to remedy the same.

74 § 48-21. Reputation of property; admissible evidence.

75 In any action brought under this chapter:

76 1. Evidence of the general reputation of the property is admissible to corroborate testimony based on
77 personal knowledge or observation, or evidence seized during the execution of a search and seizure
78 warrant, but shall not, in and of itself, be sufficient to establish the existence of a nuisance under this
79 section; and

80 2. Evidence the nuisance had been discontinued at the time of the filing of the civil action or at the
81 time of the hearing does not bar the imposition of appropriate relief by the court under this chapter.

82 § 48-22. Payment of costs and attorney's fees.

83 The court may award court costs and reasonable attorney's fees to a prevailing plaintiff in an action
84 brought under this chapter.

85 § 48-23 Action to be heard.

86 An action brought under this chapter shall be heard by the court within fourteen days after service
87 of process on the parties.

88 § 48-24. Other rights or remedies.

89 This section does not abrogate any equitable or legal right or remedy under existing law to abate a
90 nuisance.