

HOUSE BILL NO. 598

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on \_\_\_\_\_)

(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

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

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

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

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

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

53 or the plaintiff's attorney or agent shall advise the court of any payments by the defendant that result in a  
54 variance reducing the amount due the plaintiff as of the day of the hearing.

55 2. a. If the unlawful detainer summons served upon the defendant requests judgment for all  
56 amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on  
57 the summons for unlawful detainer filed in court in accordance with the evidence and in accordance with  
58 the amounts contracted for in the rental agreement and shall enter a judgment for such amount due as of  
59 the date of the hearing in addition to entering an order of possession for the premises. Notwithstanding  
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 include  
67 such additional amounts. If the plaintiff requests to amend the amount alleged to be due and owing in an  
68 unlawful detainer, the judge shall grant such amendment. Upon amendment of the unlawful detainer, such  
69 plaintiff shall not subsequently file an additional summons for unlawful detainer against the defendant for  
70 such additional amounts if such additional amounts could have been included in such amendment. If  
71 another unlawful detainer is filed, the court shall dismiss the subsequent unlawful detainer. Nothing herein  
72 shall be construed to preclude a plaintiff from filing an unlawful detainer for a non-rent violation during  
73 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, at  
76 the request of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the hearing  
77 shall include the rent due for the entire month in which the hearing is held, and rent shall not be prorated  
78 as of the actual court date. Otherwise, the rent shall be prorated as of the date of the hearing. However,  
79 nothing herein shall be construed to permit a landlord to collect rent in excess of the amount stated in such

80 rental agreement or lease. If a money judgment has been granted for the amount due for the month of the  
81 hearing pursuant to this section and the landlord re-rents such dwelling unit and receives rent from a new  
82 tenant prior to the end of such month, the landlord is required to reflect the applicable portion of the  
83 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 tenant  
87 at least three days prior to the effective date of termination. Upon the expiration of the three-day period,  
88 the successor owner may file an unlawful detainer under this section. Such tenant shall be responsible for  
89 payment of fair market rental from the date of such foreclosure until the date the tenant vacates the  
90 dwelling unit, as well as damages, and for payment of reasonable attorney fees and court costs.

91 **§ 55.1-1245. (Effective until the later of July 1, 2028, or seven years after the COVID-19**  
92 **pandemic state of emergency expires) Noncompliance with rental agreement; monetary penalty.**

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

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

102 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice  
103 on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement  
104 will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to  
105 the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves  
106 or constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety,

107 the landlord may terminate the rental agreement immediately and proceed to obtain possession of the  
108 premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as  
109 used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes  
110 a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant,  
111 or a guest or invitee of the tenant shall constitute an immediate nonremediable violation for which the  
112 landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any  
113 criminal offense that may arise out of the same actions. In order to obtain an order of possession from a  
114 court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other activity  
115 that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord  
116 shall prove any such violations by a preponderance of the evidence. However, where the illegal drug  
117 activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health  
118 and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be  
119 presumed to have knowledge of such activities unless the presumption is rebutted by a preponderance of  
120 the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall  
121 be held within 15 calendar days from the date of service on the tenant; however, the court shall order an  
122 earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an  
123 immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is  
124 scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order  
125 that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be  
126 heard no later than 30 calendar days from the date of service on the tenant. During the interim period  
127 between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court  
128 may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding  
129 or the interests of any other tenant residing on the premises. Failure by the court to hold either of the  
130 hearings within the time limits set out in this section shall not be a basis for dismissal 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 § 55.1-1246 on the  
133 basis of 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 or 16.1-279.1 or subsection B of § 20-103, the lease shall  
135 not terminate solely due 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 of  
139 a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the perpetrator has  
140 returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence  
141 that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible  
142 for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the  
143 landlord, but in no event later than seven days. If the provisions of this subsection are not applicable, the  
144 tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or  
145 invitees pursuant to § 55.1-1227 and is subject to termination of the tenancy pursuant to the lease and this  
146 chapter.

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

153 F. If rent is unpaid when due, and the tenant fails to pay rent within ~~five~~ 14 days after written  
154 notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate  
155 the rental agreement if the rent is not paid within the ~~five-day~~ 14-day period, the landlord may terminate  
156 the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a  
157 check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic  
158 funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in  
159 bad faith by the authorizing party, and the tenant fails to pay rent within ~~five~~ 14 days after written notice  
160 is 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 electronic  
162 funds transfer within the ~~five-day~~ 14-day period, the landlord may terminate the rental agreement and  
163 proceed to obtain possession of the premises as provided in § 55.1-1251. 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 § 8.01-  
166 126, provided that the landlord has given notice in accordance with § 55.1-1202, which notice may be  
167 included in the ~~five-day~~ 14-day termination notice provided in accordance with this section.

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

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

186 I. 1. A landlord who owns more than four rental dwelling units or more than a 10 percent interest  
187 in more than four rental dwelling units, whether individually or through a business entity, in the

188 Commonwealth, shall not take any adverse action, as defined in 15 U.S.C. § 1681a(k), against an applicant  
189 for tenancy based solely on payment history or an eviction for nonpayment of rent that occurred during  
190 the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state  
191 of emergency declared by the Governor related to the COVID-19 pandemic.

192           2. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant  
193 written notice of the denial and of the applicant's right to assert that his failure to qualify was based upon  
194 payment history or an eviction based on nonpayment of rent that occurred during the period beginning on  
195 March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related  
196 to the COVID-19 pandemic. The written notice of denial shall include the statewide legal aid telephone  
197 number and website address and shall inform the applicant that he must assert his right to challenge the  
198 denial within seven days of the postmark date. If the landlord does not receive a response from the  
199 applicant within seven days of the postmark date, the landlord may proceed. If, in addition to the written  
200 notice, the landlord provides notice to the applicant by electronic or telephonic means using an email  
201 address, telephone number, or other contact information provided by the applicant informing the applicant  
202 of his denial and right to assert that his failure to qualify was based upon payment history or an eviction  
203 based on nonpayment of rent that occurred during the period beginning on March 12, 2020, and ending  
204 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic  
205 and the tenant does not make such assertion that the failure to qualify was the result of such payment  
206 history or eviction prior to the close of business on the next business day, the landlord may proceed. The  
207 landlord must be able to validate the date and time that any communication sent by electronic or telephonic  
208 means was sent to the applicant. If a landlord does receive a response from the applicant asserting such a  
209 right, and the landlord relied upon a consumer or tenant screening report, the landlord shall make a good  
210 faith effort to contact the generator of the report to ascertain whether such determination was due solely  
211 to the applicant for tenancy's payment history or an eviction for nonpayment that occurred during the  
212 period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of  
213 emergency declared by the Governor related to the COVID-19 pandemic. If the landlord does not receive



214 a response from the generator of the report within three business days of requesting the information, the  
215 landlord may proceed with using the information from the report without additional action.

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

218 **§ 55.1-1245. (Effective the later of July 1, 2028, or seven years after the COVID-19 pandemic**  
219 **state of emergency expires) Noncompliance with rental agreement; monetary penalty.**

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

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

229 C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice  
230 on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement  
231 will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to  
232 the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves  
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237 a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant,  
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249 earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an  
250 immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is  
251 scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order  
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256 or the interests of any other tenant residing on the premises. Failure by the court to hold either of the  
257 hearings within the time limits set out in this section shall not be a basis for dismissal of the case.

258 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling  
259 unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on the  
260 basis of information provided by the tenant to the landlord, or by a protective order from a court of  
261 competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease shall  
262 not terminate solely due to an act of family abuse against the tenant. However, these provisions shall not  
263 be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a  
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265 from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of  
266 a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the perpetrator has  
267 returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence

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270 landlord, but in no event later than seven days. If the provisions of this subsection are not applicable, the  
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295 G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain  
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297 event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to  
298 recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained from  
299 a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as  
300 contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv)  
301 reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the  
302 proceeding as contracted for in the rental agreement or as provided by law only if court action has been  
303 filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

304 H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or  
305 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the  
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309 fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant  
310 proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable;  
311 (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi)  
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