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HOUSE BILL NO. 1638

Offered January 8, 2025

Prefiled January 3, 2025

A *BILL to amend and reenact §§ 36-139, 55.1-1200, and 55.1-1203 of the Code of Virginia, relating to Department of Housing and Community Development; Virginia Residential Landlord and Tenant Act; affordable housing; criminal record screening model policy.*

Patron—Hayes

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-139, 55.1-1200, and 55.1-1203 of the Code of Virginia are amended and reenacted as follows:

§ 36-139. Powers and duties of Director.

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.

2. Making information available to communities, planning district commissions, service districts, and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.

5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration, and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

6. Developing state community development policies, goals, plans, and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families, and communities.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.

11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

13. Establishing and operating a Building Code Academy for the training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development.

14. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

15. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.

16. Administering, with the cooperation of the Department of Health, state assistance programs for public water supply systems.

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- 59 17. Advising the Board on matters relating to policies and programs of the Virginia Housing Trust Fund.
60 18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing Trust
61 Fund and to carry out the policies and procedures established by the Board.
62 19. Preparing agreements and documents for loans and grants to be made from the Virginia Housing Trust
63 Fund; soliciting, receiving, reviewing, and selecting the applications for which loans and grants are to be
64 made from such fund; directing the Virginia Housing Development Authority and the Department as to the
65 closing and disbursing of such loans and grants and as to the servicing and collection of such loans; directing
66 the Department as to the regulation and monitoring of the ownership, occupancy, and operation of the
67 housing developments and residential housing financed or assisted by such loans and grants; and providing
68 direction and guidance to the Virginia Housing Development Authority as to the investment of moneys in
69 such fund.
70 20. Establishing and administering program guidelines for a statewide homeless intervention program.
71 21. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block
72 Grant and any contingency funds awarded and carry over funds, furnishing home weatherization, and
73 associated services to low-income households within the Commonwealth in accordance with applicable
74 federal law and regulations.
75 22. Developing a strategy concerning the expansion of affordable, accessible housing for older Virginians
76 and Virginians with disabilities, including supportive services.
77 23. Serving as the Executive Director of the Commission on Local Government as prescribed in § 15.2-
78 2901 and perform all other duties of that position as prescribed by law.
79 24. Developing a strategy, in consultation with the Virginia Housing Development Authority, for the
80 creation and implementation of housing programs and community development for the purpose of meeting
81 the housing needs of persons who have been released from federal, state, and local correctional facilities into
82 communities.
83 25. *Developing and maintaining on the Department's website a criminal record screening model policy*
84 *for admitting or denying an applicant for affordable housing covered under the Virginia Residential*
85 *Landlord and Tenant Act (§ 55.1-1200 et seq.) in accordance with the U.S. Department of Housing and*
86 *Urban Development's guidance on the application of the federal Fair Housing Act (42 U.S.C. § 3601 et seq.)*
87 *to the use of criminal records.*
88 26. Administering the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2
89 jointly with the Virginia Small Business Financing Authority and the Virginia Housing Development
90 Authority.
91 ~~26.~~ 27. Developing a statement of tenant rights and responsibilities explaining in plain language the rights
92 and responsibilities of tenants under the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.)
93 and maintaining such statement on the Department's website. The Director shall also develop and maintain on
94 the Department's website a printable form to be signed by the parties to a written rental agreement
95 acknowledging that the tenant has received from the landlord the statement of tenant rights and
96 responsibilities as required by § 55.1-1204. The Director may at any time amend the statement of tenant
97 rights and responsibilities and such printable form as the Director deems necessary and appropriate. The
98 statement of tenant rights and responsibilities shall contain a plain language explanation of the rights and
99 responsibilities of tenants in at least 14-point type. The statement shall provide the telephone number and
100 website address for the statewide legal aid organization and direct tenants with questions about their rights
101 and responsibilities to contact such organization.
102 ~~27.~~ 28. Developing a statement of tenant rights and responsibilities explaining in plain language the rights
103 and responsibilities of tenants under the Virginia Manufactured Home Lot Rental Act (§ 55.1-1300 et seq.)
104 and maintaining such statement on the Department's website. The Director shall also develop and maintain on
105 the Department's website a printable form to be signed by the parties to a written rental agreement
106 acknowledging that the tenant has received from the landlord the statement of tenant rights and
107 responsibilities as required by § 55.1-1303. The Director may at any time amend the statement of tenant
108 rights and responsibilities and such printable form as the Director deems necessary and appropriate. The
109 statement of tenant rights and responsibilities shall contain a plain language explanation of the rights and
110 responsibilities in at least 14-point type. The statement shall provide the telephone number and website
111 address for the statewide legal aid organization and direct tenants with questions about their rights and
112 responsibilities to contact such organization.
113 ~~28.~~ 29. Developing a sample termination notice that includes language referencing acceptance of rent with
114 reservation by a landlord following a breach of a lease by a tenant in accordance with § 55.1-1250. The
115 sample termination notice shall be in at least 14-point type and shall be maintained on the Department's
116 website.
117 ~~29.~~ 30. Developing and operating a Virginia Residential Sites and Structures Locator database to assist
118 localities in marketing any structures and parcels determined by the locality to be suitable for future
119 residential or mixed-use development or redevelopment and that are under (i) public ownership, (ii) public

120 and private ownership, or (iii) private ownership if the owner or owners have authorized the locality to
 121 market the structure or parcel for future residential or mixed-use development or redevelopment purposes.

122 ~~30.~~ 31. Conducting a comprehensive statewide housing needs assessment at least every five years, which
 123 shall include (i) a review of housing cost burden and instability, supply and demand for affordable rental
 124 housing, and supply and demand for affordable for-sale housing and (ii) regional or local profiles that focus
 125 on specific housing needs of particular regions or localities.

126 ~~31.~~ 32. Developing a statewide housing plan that reflects the findings of the statewide housing needs
 127 assessment conducted pursuant to subdivision ~~30~~ 31, which plan shall include measurable goals and be
 128 updated at least every five years to reflect changes in the Commonwealth's housing goals, and providing an
 129 annual report to the General Assembly on progress toward meeting the goals identified in such plan and the
 130 availability of housing that is accessible to people with disabilities.

131 ~~32.~~ 33. Collecting reports submitted by localities pursuant to § 36-139.9 in any manner prescribed by the
 132 Department, including any forms developed by the Department to collect the information required to be
 133 reported by the localities pursuant to such section and publishing such reports on its website.

134 ~~33.~~ 34. Carrying out such other duties as may be necessary and convenient to the exercise of powers
 135 granted to the Department.

136 **§ 55.1-1200. Definitions.**

137 As used in this chapter, unless the context requires a different meaning:

138 "Action" means any recoupment, counterclaim, setoff, or other civil action and any other proceeding in
 139 which rights are determined, including actions for possession, rent, unlawful detainer, unlawful entry, and
 140 distress for rent.

141 "*Adverse action*" means the same as that term is defined in 15 U.S.C. § 1681a.

142 "*Affordable housing unit*" means any residential building or dwelling unit that has received federal, state,
 143 or local funding, tax credits, or other subsidies connected in whole or in part to the restriction of rent,
 144 subsidization of ownership, or the development, rehabilitation, or other provision of rental housing for
 145 extremely low-income, very low-income, low-income, or moderate-income households, as those terms are
 146 defined by the U.S. Department of Housing and Urban Development.

147 "Application deposit" means any refundable deposit of money, however denominated, including all
 148 money intended to be used as a security deposit under a rental agreement, or property, that is paid by a tenant
 149 to a landlord for the purpose of being considered as a tenant for a dwelling unit.

150 "Application fee" means any nonrefundable fee that is paid by a tenant to a landlord or managing agent
 151 for the purpose of being considered as a tenant for a dwelling unit.

152 "Assignment" means the transfer by any tenant of all interests created by a rental agreement.

153 "Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord,
 154 but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant
 155 under the rental agreement.

156 "Building or housing code" means any law, ordinance, or governmental regulation concerning fitness for
 157 habitation or the construction, maintenance, operation, occupancy, use, or appearance of any structure or that
 158 part of a structure that is used as a home, residence, or sleeping place by one person who maintains a
 159 household or by two or more persons who maintain a common household.

160 "Commencement date of rental agreement" means the date upon which the tenant is entitled to occupy the
 161 dwelling unit as a tenant.

162 "Community land trust" means a community housing development organization whose (i) corporate
 163 membership is open to any adult resident or organization of a particular geographic area specified in the
 164 bylaws of the organization and (ii) board of directors includes a majority of members who are elected by the
 165 corporate membership and are composed of tenants, corporate members who are not tenants, and any other
 166 category of persons specified in the bylaws of the organization and that:

- 167 1. Is not sponsored by a for-profit organization;
- 168 2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
- 169 3. Transfers ownership of any structural improvements located on such leased parcels to the tenant; and
- 170 4. Retains a preemptive option to purchase any such structural improvement at a price determined by
 171 formula that is designed to ensure that the improvement remains affordable to low-income and moderate-
 172 income families in perpetuity.

173 "Damage insurance" means a bond or commercial insurance coverage as specified in the rental agreement
 174 to secure the performance by the tenant of the terms and conditions of the rental agreement and to replace all
 175 or part of a security deposit.

176 "Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more
 177 persons who maintain a household, including a manufactured home, as defined in § 55.1-1300.

178 "Effective date of rental agreement" means the date on which the rental agreement is signed by the
 179 landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

180 "Essential service" includes heat, running water, hot water, electricity, and gas.

181 "Facility" means something that is built, constructed, installed, or established to perform some particular

182 function.

183 "Good faith" means honesty in fact in the conduct of the transaction concerned.

184 "Guest or invitee" means a person, other than the tenant or an authorized occupant, who has the
185 permission of the tenant to visit but not to occupy the premises.

186 "Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and
187 ceiling, that enclose the dwelling unit as conditioned space from the outside air.

188 "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which such
189 dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the
190 name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-
191 88.03. "Landlord" does not include a community land trust.

192 "Managing agent" means the person authorized by the landlord to act as the property manager on behalf
193 of the landlord pursuant to the written property management agreement.

194 "Mold remediation in accordance with professional standards" means mold remediation of that portion of
195 the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold,
196 performed consistent with guidance documents published by the U.S. Environmental Protection Agency, the
197 U.S. Department of Housing and Urban Development, or the American Conference of Governmental
198 Industrial Hygienists (Bioaerosols: Assessment and Control); Standard and Reference Guides of the Institute
199 of Inspection, Cleaning and Restoration Certification (IICRC) for Professional Water Damage Restoration
200 and Professional Mold Remediation; or any protocol for mold remediation prepared by an industrial hygienist
201 consistent with such guidance documents.

202 "Multifamily dwelling unit" means more than one single-family dwelling unit located in a building.
203 However, nothing in this definition shall be construed to apply to any nonresidential space in such building.

204 "Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who
205 are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety,
206 trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited
207 liability partnerships or limited liability companies, or any other lawful combination of natural persons
208 permitted by law.

209 "Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining
210 sufficient proof of having given such notice in the form of a certificate of service confirming such mailing
211 prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual
212 knowledge of it, he has received a verbal notice of it, or, from all of the facts and circumstances known to
213 him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or
214 notification to another by taking steps reasonably calculated to inform another person, whether or not the
215 other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice
216 has the burden of proof to show that the notice was given to the recipient of the notice.

217 "Organization" means a corporation, government, governmental subdivision or agency, business trust,
218 estate, trust, partnership, or association; two or more persons having a joint or common interest; any
219 combination thereof; and any other legal or commercial entity.

220 "Owner" means one or more persons or entities, jointly or severally, including a mortgagee in possession,
221 in whom is vested:

222 1. All or part of the legal title to the property; or

223 2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

224 "Person" means any individual, group of individuals, corporation, partnership, business trust, association,
225 or other legal entity, or any combination thereof.

226 "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances
227 contained therein, and grounds, areas, and facilities held out for the use of tenants generally or whose use is
228 promised to the tenant.

229 "Processing fee for payment of rent with bad check" means the processing fee specified in the rental
230 agreement, not to exceed \$50, assessed by a landlord against a tenant for payment of rent with a check drawn
231 by the tenant on which payment has been refused by the payor bank because the drawer had no account or
232 insufficient funds.

233 "Readily accessible" means areas within the interior of the dwelling unit available for observation at the
234 time of the move-in inspection that do not require removal of materials, personal property, equipment, or
235 similar items.

236 "Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental
237 agreement, including prepaid rent paid more than one month in advance of the rent due date.

238 "Rental agreement" or "lease agreement" means all rental agreements, written or oral, and valid rules and
239 regulations adopted under § 55.1-1228 embodying the terms and conditions concerning the use and
240 occupancy of a dwelling unit and premises.

241 "Rental application" means the written application or similar document used by a landlord to determine if
242 a prospective tenant is qualified to become a tenant of a dwelling unit.

243 "Renter's insurance" means insurance coverage specified in the rental agreement that is a combination

244 multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal
245 property located in dwelling units not occupied by the owner.

246 "Residential tenancy" means a tenancy that is based on a rental agreement between a landlord and a tenant
247 for a dwelling unit.

248 "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a
249 structure where one or more major facilities are used in common by occupants of the dwelling unit and other
250 dwelling units. "Major facility" in the case of a bathroom means a toilet and either a bath or shower and in the
251 case of a kitchen means a refrigerator, stove, or sink.

252 "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to
253 secure the performance of the terms and conditions of a rental agreement, as a security for damages to the
254 leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the
255 commencement date of the rental agreement. "Security deposit" does not include a damage insurance policy
256 or renter's insurance policy, as those terms are defined in § 55.1-1206, purchased by a landlord to provide
257 coverage for a tenant.

258 "Single-family residence" means a structure, other than a multifamily residential structure, maintained and
259 used as a single dwelling unit, condominium unit, or any other dwelling unit that has direct access to a street
260 or thoroughfare and does not share heating facilities, hot water equipment, or any other essential facility or
261 essential service with any other dwelling unit.

262 "Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

263 "Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to
264 the exclusion of others and includes a roomer. "Tenant" does not include (i) an authorized occupant, (ii) a
265 guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a
266 rental agreement but has no right to occupy a dwelling unit.

267 "Tenant records" means all information, including financial, maintenance, and other records about a
268 tenant or prospective tenant, whether such information is in written or electronic form or any other medium.

269 "Utility" means electricity, natural gas, or water and sewer provided by a public service corporation or
270 such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a
271 landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2 or a ratio
272 utility billing system as defined in § 55.1-1212.

273 "Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked
274 eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of
275 the move-in inspection.

276 "Written notice" means notice given in accordance with § 55.1-1202, including any representation of
277 words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii)
278 stored in an electronic form or any other medium, retrievable in a perceivable form, and regardless of whether
279 an electronic signature authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) is affixed.

280 **§ 55.1-1203. Application; deposit, fee, and additional information.**

281 A. Any landlord may require a refundable application deposit in addition to a nonrefundable application
282 fee. If the applicant fails to rent the unit for which application was made, from the application deposit the
283 landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the
284 landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages
285 together with an itemized list of such expenses and damages. If, however, the application deposit was made
286 by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of
287 the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application.
288 If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that
289 portion of the application deposit wrongfully withheld and reasonable attorney fees.

290 B. A landlord may request that a prospective tenant provide information that will enable the landlord to
291 determine whether each applicant may become a tenant. The landlord may photocopy each applicant's driver's
292 license or other similar photo identification, containing either the applicant's social security number or control
293 number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not
294 photocopy a U.S. government-issued identification so long as to do so is a violation of 18 U.S.C. § 701. The
295 landlord may require, for the purpose of determining whether each applicant is eligible to become a tenant in
296 the landlord's dwelling unit, that each applicant provide a social security number issued by the U.S. Social
297 Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue
298 Service.

299 C. An application fee shall not exceed \$50, exclusive of any actual out-of-pocket expenses paid by the
300 landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant.
301 However, where an application is being made for a dwelling unit that is a public housing unit or other
302 housing unit subject to regulation by the U.S. Department of Housing and Urban Development, an
303 application fee shall not exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third party by
304 the landlord performing background, credit, or other pre-occupancy checks on the applicant.

305 D. A landlord shall consider evidence of an applicant's status as a victim of family abuse, as defined in §

306 16.1-228, to mitigate any adverse effect of an otherwise qualified applicant's low credit score. In order to
307 establish the applicant's status as a victim of family abuse, an applicant may submit to the landlord (i) a letter
308 from a sexual and domestic violence program, a housing counselor certified by the U.S. Department of
309 Housing and Urban Development, or an attorney representing the applicant; (ii) a law-enforcement incident
310 report; or (iii) a court order.

311 *E. No landlord of an affordable housing unit shall inquire about or require disclosure of, or if such*
312 *information is received, base an adverse action, in whole or in part, on an applicant's criminal or arrest*
313 *record unless the landlord does so in accordance with the criminal record screening model policy developed*
314 *by the Department of Housing and Community Development and posted on its website pursuant to § 36-139*
315 *and provides the applicant with a written copy of such policy.*

316 *F. If a landlord does not fails to comply with the requirements of this section, the applicant may recover*
317 *actual damages, including all amounts paid to the landlord as an application fee, application deposit, or*
318 *reimbursement for any of the landlord's out-of-pocket expenses that were charged to the prospective tenant*
319 *applicant, and reasonable costs of the applicant, along with including court costs and attorney fees.*

320 **2. That the Department of Housing and Community Development (the Department) shall convene a**
321 **stakeholder group consisting of representatives from the Apartment and Office Building Association of**
322 **Metropolitan Washington, Housing Opportunities Made Equal of Virginia, the Virginia Apartment**
323 **Management Association, Virginia Realtors, the Virginia Housing Alliance, Virginia First Cities**
324 **Coalition, the Virginia Municipal League, Legal Aid Justice Center, and Virginia Poverty Law Center,**
325 **and other relevant parties as identified by the Department, for the purpose of providing input into the**
326 **development of the criminal record screening model policy to be developed by the Director of the**
327 **Department for posting on its website pursuant to § 36-139 of the Code of Virginia, as amended by this**
328 **act, for admitting or denying an applicant for affordable housing covered under the Virginia**
329 **Residential Landlord and Tenant Act (§ 55.1-1200 et seq. of the Code of Virginia) in accordance with**
330 **the U.S. Department of Housing and Urban Development's guidance on the application of the federal**
331 **Fair Housing Act (42 U.S.C. § 3601 et seq.) to the use of criminal records.**