

SENATE BILL NO. 585

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute—Senator Salim)

A BILL to amend and reenact § 55.1-1200 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55.1-1204.2, relating to Virginia Residential Landlord and Tenant Act; algorithmic pricing device use by certain landlords; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-1200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55.1-1204.2 as follows:

§ 55.1-1200. Definitions.

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

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

"Algorithmic pricing device" means any automated system, software, tool, platform, or service that uses algorithms, machine learning, predictive analytics, or similar computational methods to generate, recommend, or influence rental prices or rent-increase amounts for dwelling units. "Algorithmic pricing device" does not include (i) a landlord's internal spreadsheets or manual analyses or (ii) any publicly available market-rent survey that does not rely on individualized landlord or tenant data.

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

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

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

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

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

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

37 "Community land trust" means a community housing development organization whose board of directors
38 is composed of tenants, corporate members who are not tenants, and any other category of persons specified
39 in the bylaws of the organization and that:

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

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

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

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

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

54 "Facility" means something that is built, constructed, installed, or established to perform some particular
55 function.

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

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

59 "Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and

ceiling, that enclose the dwelling unit as conditioned space from the outside air.

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

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

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

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

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

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

89 has the burden of proof to show that the notice was given to the recipient of the notice.

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

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

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

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

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

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

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

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

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

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

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

116 "Renter's insurance" means insurance coverage specified in the rental agreement that is a combination
117 multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal

118 property located in dwelling units not occupied by the owner.

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

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

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

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

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

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

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

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

146 "Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked
147 eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of

148 the move-in inspection.

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

153 **§ 55.1-1204.2. Algorithmic pricing device use by certain landlords; civil penalties.**

154 *A. For purposes of this section, "landlord" means a landlord who owns more than four rental dwelling*
155 *units or more than a four percent interest in more than four rental dwelling units, whether individually or*
156 *through a business entity, in the Commonwealth.*

157 *B. A landlord who uses an algorithmic pricing device to establish the advertised rent, renewal rent, or*
158 *rent offered to a prospective tenant shall disclose such use in writing to the tenant or the prospective tenant.*
159 *Such disclosure shall include (i) a statement that an algorithmic pricing device was used in determining the*
160 *rent and (ii) the name of the software, platform, or service used. Such disclosure shall be provided prior to*
161 *the execution of a written rental agreement or, in the case of an oral rental agreement, prior to occupancy by*
162 *the tenant.*

163 *C. A landlord shall provide to the tenant or prospective tenant a plain-language summary of the general*
164 *factors considered by the algorithmic pricing device in determining rent. However, a landlord shall not be*
165 *required to disclose proprietary formulas, source code, weighting of inputs, or other trade secrets.*

166 *D. Upon request, a tenant or prospective tenant shall be entitled to a human review of any rent*
167 *determination or renewal increase generated or recommended by an algorithmic pricing device.*

168 *E. No landlord shall:*

169 *1. Misrepresent the use or non-use of an algorithmic pricing device;*

170 *2. Offer a price for rent or renewal rent that is advertised as nonnegotiable if it was generated or*
171 *recommended by an algorithmic pricing device; or*

172 *3. Use any algorithmic pricing device in a manner that constitutes a deceptive or misleading practice.*

173 *F. If a landlord violates this section, the Attorney General may initiate an action in the name of the*
174 *Commonwealth and may seek an injunction to restrain any violations of this section and civil penalties of up*
175 *to \$1,000 for each violation under this section.*

176 *G. Nothing in this section shall be construed to:*

177 *1. Create a private right of action;*

178 *2. Require landlords to maintain records beyond those kept in the ordinary course of business; or*

179 3. *Impose any reporting or regulatory obligations on the Department of Housing and Community*
180 *Development.*