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HOUSE BILL NO. 1361

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute—Delegate Maldonado)

A BILL to amend and reenact §§ 8.01-126, 55.1-1202, and 55.1-1212 of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; civil action for unlawful detainer; termination notice; energy submetering equipment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-126, 55.1-1202, and 55.1-1212 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 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 the 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. If a summons for unlawful detainer is filed by an owner of a residential single family dwelling unit in the Commonwealth and the court finds based upon the evidence that (i) no rental agreement exists or has ever existed between the owner and the occupant; (ii) the occupant occupies such dwelling unit without permission of such owner; and (iii) the owner has given such occupant a written notice to vacate such dwelling unit at least 72 hours prior to the date of filing, an emergency hearing on such summons shall occur as soon as practicable, but not more than 14 days from the date of filing. If the case cannot be heard within 14 days from the date of filing, the emergency hearing shall be held as soon as practicable, but in no event later than 30 days after the date of the filing.

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. The court shall not enter an order of possession or judgment in favor of the plaintiff unless the plaintiff, plaintiff's attorney, or agent has presented a copy of a proper termination notice issued to the defendant and the court has entered such notice into evidence. No landlord shall file or maintain an action for unlawful detainer against a residential tenant in a court of law for any alleged lease violation until the landlord has provided the tenant with a proper and effective termination notice.

E. Notwithstanding any rule of court or provision of law to the contrary, the plaintiff, plaintiff's attorney, or agent 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. If the defendant fails to appear in court, the plaintiff, plaintiff's attorney, or agent may introduce into evidence by an affidavit or sworn testimony a statement of the amount of outstanding rent, late charges, attorney fees, costs, and any other charges or damages as contracted for in the rental agreement that are due and owing as of the date of the hearing. The plaintiff, plaintiff's attorney, or agent shall advise the court of any payments made by or on behalf of the defendant that result in a reduction of the amount due and owing to the plaintiff.

F. 1. The plaintiff may include on the summons for unlawful detainer a request for all amounts due and

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60 owing as of the date of the hearing and the approximate amount the defendant may owe as of the date of the
61 hearing if the defendant makes no payments prior to the date of such hearing. Notwithstanding any rule of
62 court or provision of law to the contrary, if such request is made on the summons for unlawful detainer, the
63 court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in
64 accordance with the evidence and the amounts contracted for in the rental agreement. If the plaintiff makes
65 such a request and additional amounts become due and owing prior to the final disposition of a pending
66 unlawful detainer, a plaintiff may amend the amount in an unlawful detainer to request all amounts due and
67 owing as of the date of final disposition.

68 If, however, the plaintiff has not included on the summons for unlawful detainer a request for all amounts
69 due and owing as of the date of the hearing, the court may permit the plaintiff to amend the amount requested
70 on the summons for unlawful detainer upon finding that (i) the evidence accurately sets forth the amount due
71 and owing to the plaintiff, (ii) the plaintiff provided the defendant with a separate written notice of additional
72 amounts due and owing as of the date of the hearing and of the plaintiff's intent to amend the amount
73 requested on the summons, and (iii) the defendant had the opportunity at court to object to any additional
74 amounts claimed.

75 2. If the plaintiff requests on the summons for unlawful detainer all amounts due and owing as of the date
76 of the hearing or if the court grants an amendment of the amounts requested on the summons for unlawful
77 detainer, the plaintiff shall not subsequently file additional unlawful detainers or warrants in debt against the
78 defendant for such additional amounts if those amounts could have been included in the amended amount.
79 Any such subsequent unlawful detainers or warrants in debt filed for amounts that were included in the
80 amended amount shall be dismissed. Nothing in this section shall preclude the plaintiff from filing an
81 unlawful detainer for a non-rent lease violation during the pendency of an unlawful detainer for nonpayment
82 of rent or from filing a warrant in debt for amounts unrelated to the unlawful detainer against the defendant.

83 3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement or lease
84 provides that rent is due and payable on the first of the month in advance for the entire month, at the request
85 of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the hearing shall include
86 the rent due for the entire month in which the hearing is held, and rent shall not be prorated as of the actual
87 court date. Otherwise, the rent shall be prorated as of the date of the hearing. However, nothing herein shall
88 be construed to permit a landlord to collect rent in excess of the amount stated in such rental agreement or
89 lease. If a money judgment has been granted for the amount due for the month of the hearing pursuant to this
90 section and the landlord re-rents such dwelling unit and receives rent from a new tenant prior to the end of
91 such month, the landlord is required to reflect the applicable portion of the judgment as satisfied pursuant to
92 § 16.1-94.01.

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

100 **§ 55.1-1202. Notice.**

101 A. If the rental agreement so provides, the landlord and tenant may send notices in electronic form;
102 however, any tenant who so requests may elect to send and receive notices in paper form. If electronic
103 delivery is used, the sender shall retain sufficient proof of the electronic delivery, which may be an electronic
104 receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by
105 the sender confirming the electronic delivery.

106 B. In the case of the landlord, notice is served on the landlord at his place of business where the rental
107 agreement was made or at any place held out by the landlord as the place for receipt of the communication.

108 In the case of the tenant, notice is served at the tenant's last known place of residence, which may be the
109 dwelling unit.

110 C. Notice, knowledge, or a notice or notification received by an organization is effective for a particular
111 transaction from the time it is brought to the attention of the person conducting that transaction, or from the
112 time it would have been brought to his attention if the organization had exercised reasonable diligence.

113 D. No notice of termination of tenancy served upon a tenant by a public housing authority organized
114 under the Housing Authorities Law (§ 36-1 et seq.) shall be effective unless it contains on its first page, in
115 type no smaller or less legible than that otherwise used in the body of the notice, the name, address, and
116 telephone number of the legal aid program, if any, serving the jurisdiction in which the premises is located.

117 No notice of termination of tenancy served upon a tenant receiving tenant-based rental assistance through
118 (i) the Housing Choice Voucher Program, 42 U.S.C. § 1437f(o), or (ii) any other federal, state, or local
119 program by a private landlord shall be effective unless it contains on its first page, in type no smaller or less
120 legible than that otherwise used in the body of the notice, the statewide legal aid telephone number and
121 website address.

122 E. *No notice of termination of tenancy for nonpayment of rent shall be effective unless such notice*
123 *contains a written statement of charges and payments over the course of the tenancy or the past 12 months,*
124 *whichever is shorter, and any late charges, attorney fees, costs, and other charges or damages as contracted*
125 *for in the rental agreement that are due and owing. If the rental agreement provides for the use of*
126 *submetering equipment or energy allocation equipment, as those terms are defined in § 56-245.2, or a ratio*
127 *utility billing system as defined in § 55.1-1212, such notice shall also include debits and credits incurred by*
128 *the tenant for energy and utility bills and any additional charges permitted pursuant to subsections C and D*
129 *of § 55.1-1212.*

130 F. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third
131 party the responsibility of providing any written notice under this chapter. The landlord may also engage an
132 attorney at law to prepare or provide any written notice under this chapter or legal process under Title 8.01.
133 Nothing herein shall be construed to preclude use of an electronic signature as defined in § 59.1-480, or an
134 electronic notarization as defined in § 47.1-2, in any written notice under this chapter or legal process under
135 Title 8.01.

136 **§ 55.1-1212. Energy submetering, energy allocation equipment, sewer and water submetering**
137 **equipment, and ratio utility billing systems; local government fees.**

138 A. As used in this section:

139 "Energy allocation equipment" means the same as that term is defined in § 56-245.2.

140 "Energy submetering equipment" ~~has the same meaning ascribed to~~ means the same as "submetering
141 equipment" defined in § 56-245.2.

142 "Local government fees" means any local government charges or fees assessed against a residential
143 building, including charges or fees for stormwater, recycling, trash collection, elevator testing, fire or life
144 safety testing, or residential rental inspection programs.

145 "Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among
146 the tenants in a residential building, the actual or anticipated water, sewer, electrical, oil, or natural gas
147 billings billed to the residential building owner from a third-party provider of the utility service. Permitted
148 allocation methods may include formulas based on square footage, occupancy, number of bedrooms, or some
149 other specific method agreed to by the residential building owner and the tenant in the rental agreement or
150 lease.

151 "Residential building" means all of the individual units served through the same utility-owned meter
152 within a residential building that is defined in § 56-245.2 as an apartment building or house or all of the
153 individual dwelling units served through the same utility-owned meter within a manufactured home park as
154 defined in § 55.1-1300.

155 "Water and sewer submetering equipment" means equipment used to measure actual water or sewer usage
156 in any residential building when such equipment is not owned or controlled by the utility or other provider of
157 water or sewer service that provides service to the residential building.

158 B. Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment,
159 or a ratio utility billing system may be used in a residential building if clearly stated in the rental agreement
160 or lease for the residential building. All energy submetering equipment and energy allocation equipment shall
161 meet the requirements and standards established and enforced by the State Corporation Commission pursuant
162 to § 56-245.3.

163 C. If energy submetering equipment, energy allocation equipment, or water and sewer submetering
164 equipment is used in any residential building, the owner, manager, or operator of such residential building
165 shall bill the tenant for electricity, oil, natural gas, or water and sewer for the same billing period as the utility
166 serving the residential building, unless the rental agreement or lease expressly provides otherwise. The
167 owner, manager, or operator of such residential building may charge and collect from the tenant additional
168 service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the
169 actual costs of administrative expenses and billing charged to the residential building owner, manager, or
170 operator by a third-party provider of such services, provided that such charges are agreed to by the residential
171 building owner and the tenant in the rental agreement or lease. The residential building owner may require
172 the tenant to pay a late charge of up to \$5 if the tenant fails to make payment when due, which shall not be
173 less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.

174 D. If a ratio utility billing system is used in any residential building, in lieu of increasing the rent, the
175 owner, manager, or operator of such residential building may employ such a program that utilizes a
176 mathematical formula for allocating, among the tenants in a residential building, the actual or anticipated
177 water, sewer, electrical, oil, or natural gas billings billed to the residential building owner from a third-party
178 provider of the utility service. The owner, manager, or operator of the residential building may charge and
179 collect from the tenant additional service charges, including monthly billing fees, account set-up fees, or
180 account move-out fees, to cover the actual costs of administrative expenses and billings charged to the
181 residential building owner, manager, or operator by a third-party provider of such services, provided that such
182 charges are agreed to by the residential building owner and the tenant in the rental agreement or lease. The
183 residential building owner may require the tenant to pay a late charge of up to \$5 if the tenant fails to make

184 payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill
185 sent pursuant to this section. The late charge shall be deemed rent (i) as defined in § 55.1-1200 if a ratio
186 utility billing system is used in a residential multifamily dwelling unit subject to this chapter or (ii) as defined
187 in § 55.1-1300 if a ratio utility billing system is used in a manufactured home park subject to the
188 Manufactured Home Lot Rental Act (§ 55.1-1300 et seq.).

189 E. Energy allocation equipment shall be tested periodically by the owner, manager, or operator of the
190 residential building. Upon the request by a tenant, the owner shall test the energy allocation equipment
191 without charge. The test conducted without charge to the tenant shall not be conducted more frequently than
192 once in a 24-month period for the same tenant. The tenant or his designated representative may be present
193 during the testing of the energy allocation equipment. A written report of the results of the test shall be made
194 to the tenant within 10 working days after the completion of the test.

195 F. The owner of any residential building shall maintain adequate records regarding energy submetering
196 equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing
197 system. *Such records shall include a description of how monthly energy and utility billing fees are calculated*
198 *and a history of billing fee payments for each tenant over the duration of the tenancy or the past 12 months,*
199 *whichever is shorter.* A tenant may inspect and copy the records for the leased premises during reasonable
200 business hours at a convenient location within or serving the residential building. ~~The owner of the residential~~
201 ~~building may impose and collect a reasonable charge for copying documents, reflecting the actual costs of~~
202 ~~materials and labor for copying, prior to providing copies of the records to the tenant.~~

203 G. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to
204 its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any
205 breach of the rental agreement or lease terms required by this section or § 56-245.3, if applicable, to the same
206 extent as such actions may be maintained for breach of other terms of the rental agreement or lease under this
207 chapter, if applicable. The use of energy submetering equipment, energy allocation equipment, water and
208 sewer submetering equipment, or a ratio utility billing system is not within the jurisdiction of the Department
209 of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2.

210 H. In lieu of increasing the rent, the owner, manager, or operator of a residential building may employ a
211 program that utilizes a mathematical formula for allocating the actual or anticipated local government fees
212 billed to the residential building owner among the tenants in such residential building if clearly stated in the
213 rental agreement or lease. Permitted allocation methods may include formulas based upon square footage,
214 occupancy, number of bedrooms, or some other specific method agreed to by the residential building owner
215 and the tenant in the rental agreement or lease. Such owner, manager, or operator of a residential building
216 may also charge and collect from each tenant additional service charges, including monthly billing fees,
217 account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses for
218 administration of such a program. If the building is residential and is subject to (i) this chapter, such local
219 government fees and administrative expenses shall be deemed to be rent as defined in § 55.1-1200 or (ii) the
220 Manufactured Home Lot Rental Act (§ 55.1-1300 et seq.), such local government fees and administrative
221 expenses shall be deemed to be rent as defined in § 55.1-1300.

222 I. Nothing in this section shall be construed to prohibit an owner, manager, or operator of a residential
223 building from including water, sewer, electrical, natural gas, oil, or other utilities in the amount of rent as
224 specified in the rental agreement or lease.