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SENATE BILL NO. 588

Senate Amendments in [] - February 9, 2024

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.

Patrons Prior to Engrossment—Senators Lucas and Surovell

Referred to Committee for Courts of Justice

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.

17. Advising the Board on matters relating to policies and programs of the Virginia Housing Trust

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59 Fund.

60 18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing
61 Trust 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
63 Trust Fund; soliciting, receiving, reviewing, and selecting the applications for which loans and grants are
64 to be made from such fund; directing the Virginia Housing Development Authority and the Department
65 as to the closing and disbursing of such loans and grants and as to the servicing and collection of such
66 loans; directing the Department as to the regulation and monitoring of the ownership, occupancy, and
67 operation of the housing developments and residential housing financed or assisted by such loans and
68 grants; and providing direction and guidance to the Virginia Housing Development Authority as to the
69 investment of moneys in 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
76 Virginians and Virginians with disabilities, including supportive services.

77 23. Serving as the Executive Director of the Commission on Local Government as prescribed in
78 § 15.2-2901 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
81 meeting the housing needs of persons who have been released from federal, state, and local correctional
82 facilities into communities.

83 25. *Developing and maintaining on the Department's website a criminal record screening model*
84 *policy for admitting or denying an applicant for affordable housing covered under the Virginia*
85 *Residential Landlord and Tenant Act (§ 55.1-1200 et seq.) in accordance with the U.S. Department of*
86 *Housing and Urban Development's guidance on the application of the Fair Housing Act (42 U.S.C.*
87 *§ 3601 et seq.) to the use of criminal records.*

88 26. Administering the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title
89 15.2 jointly with the Virginia Small Business Financing Authority and the Virginia Housing
90 Development Authority.

91 ~~26.~~ 27. Developing a statement of tenant rights and responsibilities explaining in plain language the
92 rights and responsibilities of tenants under the Virginia Residential Landlord and Tenant Act
93 (§ 55.1-1200 et seq.) and maintaining such statement on the Department's website. The Director shall
94 also develop and maintain on the Department's website a printable form to be signed by the parties to a
95 written rental agreement acknowledging that the tenant has received from the landlord the statement of
96 tenant rights and responsibilities as required by § 55.1-1204. The Director may at any time amend the
97 statement of tenant rights and responsibilities and such printable form as the Director deems necessary
98 and appropriate. The statement of tenant rights and responsibilities shall contain a plain language
99 explanation of the rights and responsibilities of tenants in at least 14-point type. The statement shall
100 provide the telephone number and website address for the statewide legal aid organization and direct
101 tenants with questions about their rights and responsibilities to contact such organization.

102 ~~27.~~ 28. Developing a statement of tenant rights and responsibilities explaining in plain language the
103 rights and responsibilities of tenants under the Virginia Manufactured Home Lot Rental Act (§ 55.1-1300
104 et seq.) and maintaining such statement on the Department's website. The Director shall also develop
105 and maintain on the Department's website a printable form to be signed by the parties to a written rental
106 agreement acknowledging that the tenant has received from the landlord the statement of tenant rights
107 and responsibilities as required by § 55.1-1303. The Director may at any time amend the statement of
108 tenant rights and responsibilities and such printable form as the Director deems necessary and
109 appropriate. The statement of tenant rights and responsibilities shall contain a plain language explanation
110 of the rights and responsibilities in at least 14-point type. The statement shall provide the telephone
111 number and website address for the statewide legal aid organization and direct tenants with questions
112 about their rights and responsibilities to contact such organization.

113 ~~28.~~ 29. Developing a sample termination notice that includes language referencing acceptance of rent
114 with reservation by a landlord following a breach of a lease by a tenant in accordance with § 55.1-1250.
115 The sample termination notice shall be in at least 14-point type and shall be maintained on the
116 Department's website.

117 ~~29.~~ 30. Developing and operating a Virginia Residential Sites and Structures Locator database to
118 assist localities in marketing any structures and parcels determined by the locality to be suitable for
119 future residential or mixed-use development or redevelopment and that are under (i) public ownership,
120 (ii) public and private ownership, or (iii) private ownership if the owner or owners have authorized the

121 locality to market the structure or parcel for future residential or mixed-use development or
122 redevelopment purposes.

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

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

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

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

137 **§ 55.1-1200. Definitions.**

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

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

142 "*Adverse action*" means [*to evict, fail or refuse to enter into a rental agreement, fail or refuse to*
143 *renew a rental agreement, or fail or refuse to add an individual to an existing rental agreement, or to*
144 *make a negative change to the terms and conditions of the rental agreement, including by increasing the*
145 *amount of the security deposit or rent the same as that term is defined in 15 U.S.C. § 1681a*].

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

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

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

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

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

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

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

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

171 1. Is not sponsored by a for-profit organization;
172 2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground
173 leases;

174 3. Transfers ownership of any structural improvements located on such leased parcels to the tenant;
175 and

176 4. Retains a preemptive option to purchase any such structural improvement at a price determined by
177 formula that is designed to ensure that the improvement remains affordable to low-income and
178 moderate-income families in perpetuity.

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

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

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

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

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

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

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

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

194 "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which such
195 dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose
196 the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of
197 § 16.1-88.03. "Landlord" does not include a community land trust.

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

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

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

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

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

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

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

- 230 1. All or part of the legal title to the property; or
- 231 2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

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

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

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

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

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

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

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

251 "Renter's insurance" means insurance coverage specified in the rental agreement that is a combination
252 multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring
253 personal property located in dwelling units not occupied by the owner.

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

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

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

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

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

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

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

279 "Utility" means electricity, natural gas, or water and sewer provided by a public service corporation
280 or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so
281 provides, a landlord may use submetering equipment or energy allocation equipment as defined in
282 § 56-245.2 or a ratio utility billing system as defined in § 55.1-1212.

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

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

291 **§ 55.1-1203. Application; deposit, fee, and additional information.**

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

302 B. A landlord may request that a prospective tenant provide information that will enable the landlord
303 to determine whether each applicant may become a tenant. The landlord may photocopy each applicant's
304 driver's license or other similar photo identification, containing either the applicant's social security

305 number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.
306 However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a
307 violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each
308 applicant is eligible to become a tenant in the landlord's dwelling unit, that each applicant provide a
309 social security number issued by the U.S. Social Security Administration or an individual taxpayer
310 identification number issued by the U.S. Internal Revenue Service.

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

317 D. A landlord shall consider evidence of an applicant's status as a victim of family abuse, as defined
318 in § 16.1-228, to mitigate any adverse effect of an otherwise qualified applicant's low credit score. In
319 order to establish the applicant's status as a victim of family abuse, an applicant may submit to the
320 landlord (i) a letter from a sexual and domestic violence program, a housing counselor certified by the
321 U.S. Department of Housing and Urban Development, or an attorney representing the applicant; (ii) a
322 law-enforcement incident report; or (iii) a court order. ~~If a landlord does not comply with this section,
323 the applicant may recover actual damages, including all amounts paid to the landlord as an application
324 fee, application deposit, or reimbursement for any of the landlord's out-of-pocket expenses that were
325 charged to the prospective tenant, along with attorney fees.~~

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

331 *F. If a landlord fails to comply with the requirements of this section, the applicant may recover
332 actual damages, including all amounts paid to the landlord as an application fee, application deposit, or
333 reimbursement for any of the landlord's out-of-pocket expenses that were charged to the applicant, and
334 reasonable costs of the applicant, including court costs and attorney fees.*

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