

COMMITTEE SUBSTITUTE

FOR

## **H. B. 3202**

---

(BY DELEGATES MILEY, CAPUTO, SKAFF, FLEISCHAUER  
MANCHIN, LAWRENCE, POORE, LANE, SOBONYA AND PASDON)

---

(Originating in the Committee on the Judiciary)  
[February 24, 2011]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §37-6A-1, §37-6A-2, §37-6A-3, §37-6A-4, §37-6A-5 and §37-6A-6, all relating to residential rental security deposits; relevant definitions; security deposits; maintenance of records; prohibited provisions in rental agreements; remedies upon landlord's noncompliance; application of article; security deposits prior to effective date of article.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §37-6A-1, §37-6A-2, §37-6A-3, §37-6A-4, §37-6A-5 and §37-6A-6, all to read as follows:

**ARTICLE 6A. RESIDENTIAL RENTAL SECURITY DEPOSITS.**

**§37-6A-1. Definitions.**

1 When used in this article, unless expressly stated  
2 otherwise:

3 (1) "Action" means recoupment, counterclaim, set off or  
4 other civil suit and any other proceeding in which rights are  
5 determined, including without limitation actions for  
6 possession, rent, unlawful detainer, unlawful entry and  
7 distress for rent.

8 (2) "Application fee" means any deposit of money,  
9 however denominated, which is paid by a tenant to a  
10 landlord, lessor or agent of a landlord for the purpose of  
11 being considered as a tenant for a dwelling unit.

12 (3) "Dwelling unit" means a structure or part of a  
13 structure that is used as a home or residence by one or more  
14 persons who maintain a household, including, but not limited  
15 to, a manufactured home.

16 (4) "Facility" means something that is built, constructed,  
17 installed or established to perform some particular function.

18 (5) "Landlord" means the owner or lessor of the dwelling  
19 unit or the building of which such dwelling unit is a part.  
20 "Landlord" also includes a managing agent of the premises  
21 who fails to disclose the name of such owner or lessor.

22 (6) "Managing agent" means a person authorized by the  
23 landlord to act on behalf of the landlord under a management  
24 agreement.

25 (7) "Notice period" means: (A) within 60 days of the  
26 termination of the tenancy; or (B) within 45 days of the  
27 occupation of the premise by a subsequent tenant, whichever  
28 time period is shorter.

29 (8) "Owner" means one or more persons, jointly or  
30 severally, in whom is vested:

31 (A) All or part of the legal title to the property, or

32 (B) All or part of the beneficial ownership and a right to  
33 present use and enjoyment of the premises, and the term  
34 includes a mortgagee in possession.

35 (9) "Person" means any individual, group of individuals,  
36 corporation, partnership, business trust, association or other  
37 legal entity, or any combination thereof.

38 (10) "Premises" means a dwelling unit and the structure  
39 of which it is a part and facilities and appurtenances therein  
40 and grounds, areas and facilities held out for the use of  
41 tenants generally or whose use is promised to the tenant.

42 (11) "Rent" means all money, other than a security  
43 deposit, a nonrefundable fee or money paid to the landlord by  
44 the tenant for damage caused by the tenant to the dwelling  
45 unit, owed or paid to the landlord under the rental agreement.

46 (12) "Rental agreement" means all agreements, written  
47 (including an electronic record as defined by paragraph (7),  
48 section two, article one, chapter thirty-nine-a of the code) or  
49 oral, express or implied, embodying the terms and conditions

50 concerning the use and occupancy of a dwelling unit and  
51 premises.

52 (13) "Roomer" means a person occupying a dwelling unit  
53 that lacks a major bathroom or kitchen facility, in a structure  
54 where one or more major facilities are used in common by  
55 occupants of the dwelling unit and other dwelling units.  
56 Major facility in the case of a bathroom means toilet, and  
57 either a bath or shower, and in the case of a kitchen means  
58 refrigerator, stove or sink.

59 (14) "Security deposit" means any refundable deposit of  
60 money that is furnished by a tenant to a landlord to secure the  
61 performance of the terms and conditions of a rental  
62 agreement, or as security for damages to the leased premises.  
63 Security deposit does not include: (A) Rent; (B) a pet fee; or  
64 (C) application fee: *Provided*, That the parties expressly  
65 agree, in writing, that a pet fee or application fee is  
66 nonrefundable. A security deposit does not include prepaid  
67 rent.

68 (15) "Sublease" means the transfer by any tenant of any  
69 but not all interests created by a rental agreement.

70 (16) "Tenant" means a person entitled under a rental  
71 agreement to occupy a dwelling unit to the exclusion of  
72 others and shall include a roomer.

73 (17) "Utility" means electricity, natural gas, propane gas,  
74 water, sewer, telephone and cable television provided by a  
75 public utility or such other person providing residential utility  
76 services. If the rental agreement so provides, a landlord may  
77 use submetering equipment or energy allocation equipment,  
78 or a ratio utility billing system.

**§37-6A-2. Security deposits.**

1 (a) Upon termination of the tenancy and within the  
2 applicable notice period, any security deposit held by the  
3 landlord, minus any deductions for damages or other charges,  
4 shall be delivered to the tenant, together with a written  
5 itemization of any such damages or other charges as provided  
6 in subsection (c).

7 (b) Upon termination of the tenancy, any security deposit  
8 held by the landlord may be applied by the landlord only to:

9 (1) The payment of accrued rent, including the reasonable  
10 charges for late payment of rent specified in the rental  
11 agreement;

12 (2) The payment of the amount of damages which the  
13 landlord has suffered by reason of the tenant's  
14 noncompliance with the rental agreement, less reasonable  
15 wear and tear;

16 (3) The payment of unpaid utilities in the name of the  
17 landlord that the rental agreement provided were to be paid  
18 by the tenant that were actually used by the tenant prior to the  
19 termination of the tenancy;

20 (4) The payment of reasonable costs for the removal and  
21 storage of the tenant's personal property. The landlord may  
22 dispose of the stored personal property pursuant to the  
23 provisions of subdivisions (1) through (3), subsection (h),  
24 section three, article three-a, chapter fifty-five of this code;  
25 and

26 (5) To other damages or charges as provided in the rental  
27 agreement, including but not limited to, paying for the

28 services of a third party contractor to repair damages to the  
29 property caused by the tenant.

30 (c) The landlord shall notify, in writing, the tenant of any  
31 deductions to be made from the tenant's security deposit  
32 during the course of the tenancy of which the landlord is  
33 aware. Such notification shall not be required for deductions  
34 made less than thirty days prior to the termination of the  
35 rental agreement. A landlord who makes any deductions  
36 from the tenant's security deposit pursuant to this section  
37 may not use the circumstances related to the deduction as a  
38 basis for the termination of the tenancy.

39 (d) In the event that damages to the premises exceed the  
40 amount of the security deposit and require the services of a  
41 third party contractor, the landlord shall give written notice  
42 to the tenant, advising him or her of that fact, within the  
43 applicable notice period. If notice is given as prescribed in  
44 this subsection, the landlord shall have an additional fifteen  
45 day period to provide an itemization of the damages and the  
46 cost of repair.

47 (e) Nothing in this section shall be construed by a court  
48 of law or otherwise as entitling the tenant, upon the  
49 termination of the tenancy, to an immediate credit against the  
50 tenant's delinquent rent account in the amount of the security  
51 deposit.

52 (f) The holder of the landlord's interest in the premises at  
53 the time of the termination of the tenancy, regardless of how  
54 the interest is acquired or transferred, is bound by this section  
55 and shall be required to return any security deposit received  
56 by the original landlord that is duly owed to the tenant. The  
57 provisions of this subsection apply whether or not such  
58 security deposit is transferred with the landlord's interest by  
59 law or equity, and regardless of any contractual agreements  
60 between the original landlord and his or her successors in  
61 interest.

62 (g) If the tenant has any assignee or sublessee, the  
63 landlord shall be entitled to hold a security deposit from only  
64 one party in compliance with the provisions of this section.

65 (h) For the purposes of this section, the delivery to a  
66 tenant of a security deposit and/or any notice prescribed by  
67 this section, may be accomplished by either personal delivery  
68 to the tenant, or by mailing the deposit and/or notice to the  
69 tenant's last known address or forwarding address as  
70 provided by the tenant. *Provided*, That if personal delivery is  
71 not reasonably possible and a deposit or notice mailed to the  
72 tenant at his or her last known address or forwarding address  
73 provided is returned as non-deliverable, then the landlord  
74 shall hold the deposit or notice for the period of one year, to  
75 be personally delivered to the tenant, or his or her authorized  
76 agent or attorney, at the landlord's place of business during  
77 normal business hours within seventy-two hours of a written  
78 request from the tenant.

**§37-6A-3. Maintenance of records by landlord.**

1 The landlord shall:

2 (1) Maintain and itemize records for each tenant of all  
3 deductions from security deposits provided under this article  
4 which the landlord has made by reason of a tenant's

5 noncompliance with the rental agreement for one year after  
6 the termination of the tenancy; and

7 (2) Either permit a tenant or his or her authorized agent  
8 or attorney to inspect the tenant's records of deductions at  
9 any time during normal business hours within seventy-two  
10 hours of a written request, or at the landlord's option, provide  
11 a tenant or his or her authorized agent or attorney a copy of  
12 the tenant's record of deductions during normal business  
13 hours within seventy-two hours of a written request.

**§37-6A-4. Prohibited provision in rental agreements.**

1 A rental agreement may not contain a provision that the  
2 tenant agrees to waive or forego rights or remedies under this  
3 article. A provision prohibited by this section included in a  
4 rental agreement is unenforceable. If a landlord brings an  
5 action to enforce any of the prohibited provisions, the tenant  
6 may recover actual damages sustained by him or her and  
7 reasonable attorney's fees.

**§37-6A-5. Landlord's noncompliance.**

1 (a) If a landlord fails to comply with any of the  
2 provisions of this article, and such noncompliance is willfully  
3 or not in good faith, the tenant is entitled to a judgment for:

4 (1) The amount of any unreturned security deposit;

5 (2) Damages for annoyance or inconvenience resulting  
6 from the landlord's nonconformance equal to one and a half  
7 times the amount of the tenant's security deposit, unless the  
8 tenant owes rent to the landlord, in which case, the court  
9 shall order an amount equal to any amount awarded to the  
10 tenant pursuant to this subsection to be credited against any  
11 rent due to the landlord; and

12 (3) Reasonable attorney fees.

13 (b) This section does not limit rights or remedies  
14 available to a landlord or tenant under any other law.

**§37-6A-6. Application and effective date of this article.**

1 (a) The provisions of this article shall apply to all rental  
2 premises or units used for dwelling purposes.

3 (b) The provisions of this article do not apply to  
4 agreements for the payment of security deposits entered into  
5 prior to the effective date of this article.