

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 590

BY SENATORS WOELFEL, LINDSAY, BEACH, AND PLYMALE

[Originating in the Committee on the Judiciary;

reported on February 24, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §37-6-5a; to amend and reenact §37-6A-5 of said code; and to amend and
3 reenact §55-3A-1 of said code, all relating generally to residents of recovery residences;
4 defining terms; providing that a resident of a recovery residence may be immediately
5 discharged in certain circumstances; establishing procedures for removing recovery
6 resident; establishing refund process for fees for residency or services paid to a recovery
7 residence; requiring return transportation be provided to an individual transported to a
8 recovery residence from outside the state of West Virginia; requiring the reporting of
9 certain information to West Virginia Department of Health and Human Resources;
10 requiring award of reasonable attorney's fees against recovery residence in certain
11 instances; and requiring recovery residence file a petition for summary relief for wrongful
12 occupation of residential rental property in certain circumstances.

Be it enacted by the Legislature of West Virginia:

CHAPTER 37. REAL PROPERTY.

ARTICLE 6. LANDLORD AND TENANT.

§37-6-5a. Recovery residences.

1 (a) The purpose of this section is to recognize the uniqueness of recovery residences in
2 landlord-tenant law and provide an equitable resolution when circumstances arise which bring
3 about an unanticipated cessation of an individual's participation in a recovery residence's
4 program.

5 (b) For the purposes of this section:

6 (1) "Recovery residence" has the meaning ascribed in §16-59-1(4) of this code.

7 (2) "Residence agreement" means an agreement between an individual residing in a
8 recovery residence and the recovery residence.

9 (3) "Resident" means a person residing in and receiving services from a recovery

10 residence.

11 (c) A recovery residence may immediately discharge a resident without filing a petition for
12 summary relief for wrongful occupation of residential rental property for any of the following
13 reasons:

14 (1) The use, possession, or distribution of alcohol, any controlled substance, or
15 prescription medication for which the resident does not have a valid prescription;

16 (2) Sexual misconduct;

17 (3) Any crime of violence against a person or threat of crime of violence against a person;

18 or

19 (4) Any conduct which jeopardizes the safety of another resident.

20 (d) If a recovery residence seeks to discharge a resident for a reason not enumerated in
21 subdivisions (1) through (4), subsection (c) of this section, the resident is entitled to the due
22 process and protections afforded a “tenant” as that term is defined in §37-6A-1 of this code; the
23 recovery residence shall be treated as a “landlord” as that term is defined in §37-6A-1 of this code;
24 and the recovery residence shall be required to proceed against the resident under §55-3A-1 of
25 this code with the filing of a petition for summary relief seeking removal of the resident for wrongful
26 occupation of residential rental property: *Provided*, That any provision of a recovery residence
27 agreement seeking to waive or limit the protections afforded a resident in this section is void.

28 (e) If a resident is discharged, evicted, or otherwise removed from a recovery residence
29 prior to the expiration of the time period for which he or she has previously paid rent or any other
30 fee for residency or services, the recovery residence shall issue a refund of the rent or fee to the
31 discharged resident in an amount prorated, on a per diem basis, to account for the remainder of
32 that time period.

33 (f) If requested by the resident, a recovery residence shall first apply any refund required
34 by subsection (e) of this section to costs related to placing the resident in a higher level care
35 facility or transferring the resident to another recovery residence: *Provided*, That if the resident

36 does not request to be placed in a higher level care facility or does not request to be transferred
37 to another recovery residence, within 72 hours of a resident's discharge, eviction, or removal, the
38 recovery residence shall issue any refund due to a resident: *Provided, however,* That if the rent
39 or fee moneys were paid by a third party on behalf of the resident, any refund required by
40 subsection (e) of this section shall be issued directly to the third-party payor within 72 hours of a
41 resident's discharge, eviction, or removal.

42 (g) If a resident was transported by the recovery residence from any location outside the
43 state of West Virginia and is discharged, evicted, or otherwise removed from the recovery
44 residence, the recovery residence shall provide transportation to the location from which the
45 resident was initially transported to the discharged, evicted, or otherwise removed resident, at the
46 expense of the recovery residence.

47 (h) If the resident is discharged, evicted, or otherwise removed prior to the expiration of
48 the time period for which he or she has previously paid rent or any other fee for residency or
49 service, the recovery residence shall report non-identifying resident information regarding the
50 reason for the early discharge, eviction, or removal of the resident to the West Virginia Department
51 of Health and Human Resources, Office of Drug Control Policy.

ARTICLE 6A. RESIDENTIAL RENTAL SECURITY DEPOSITS.

§37-6A-5. Landlord's noncompliance.

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

3 (1) The amount of any unreturned security deposit; and

4 (2) Damages for annoyance or inconvenience resulting from the landlord's
5 nonconformance equal to one and a half times the amount wrongfully withheld, unless the tenant
6 owes rent to the landlord, in which case, the court shall order an amount equal to any amount
7 awarded to the tenant pursuant to this subsection to be credited against any rent due to the
8 landlord: *Provided, That if an individual is residing in a recovery residence, the recovery residence*

9 is required to comply with the provisions of this article, and if the recovery residence's
10 noncompliance is willful or not in good faith, the court shall also award reasonable attorney's fees.

11 (b) Jurisdiction for any civil action brought pursuant to this article shall be in magistrate
12 ~~court~~ or circuit court in the county where the residential rental premises or units are located.

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

CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.

ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY.

§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.

1 (a) A person desiring to remove a tenant, including a resident of a recovery residence who
2 is discharged for a reason other than those enumerated in §37-6-5a(c)(1) through (4) of this code,
3 from residential rental property may apply for ~~such~~ relief to the magistrate ~~court~~ or ~~the~~ circuit court
4 of the county in which ~~such~~ the property is located, by verified petition, setting forth the following:

5 (1) That he or she is the owner or agent of the owner and as such has a right to recover
6 possession of the property;

7 (2) A brief description of the property sufficient to identify it;

8 (3) That the tenant is wrongfully occupying ~~such~~ the property in that the tenant is in arrears
9 in the payment of rent, has breached a warranty or a leasehold covenant, or has deliberately or
10 negligently damaged the property or knowingly permitted another person to do so, and describing
11 such arrearage, breach, or act or omission; and

12 (4) A prayer for possession of the property.

13 (b) Previous to the filing of the petition the person shall request from the court the time
14 and place at which the petitioner shall be heard. The court shall fix a time for ~~such~~ the hearing,
15 which time shall not be less than five nor more than 10 judicial days following ~~such~~ the request.

16 (c) Immediately upon being apprised of the time and place for the hearing, the petitioner
17 shall ~~cause~~ have a notice of the ~~same to be~~ hearing served upon the tenant in accordance with
18 the provisions of Rule 4 of the West Virginia Rules of Civil Procedure or by certified mail, return
19 receipt requested. ~~Such~~ The notice shall inform the tenant that any defense to the petition ~~must~~
20 shall be submitted in writing to the petitioner within five days of the receipt by the tenant of the
21 notice, and in no case later than the fifth day next preceding the date of hearing. Upon receipt of
22 the return of service or the return receipt as the case may be, evidencing service upon the tenant,
23 the petitioner shall file with the court his or her petition and such proof of service.