

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 147**

By Senators Woelfel, Trump, Plymale, Azinger,  
Stuart, Barrett, Phillips, Nelson, Grady, and Maroney

[Introduced January 11, 2023]

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 to residents of recovery residences; creating  
4 pilot program for recovery residences located in Cabell County as such residences relate  
5 to landlord-tenant law; defining terms; providing that resident of recovery residence may  
6 be immediately discharged in certain circumstances; establishing procedures for removing  
7 recovery resident; establishing refund process for fees for residency or services paid to  
8 recovery residence; requiring return transportation be provided to individual transported to  
9 recovery residence from outside State of West Virginia; requiring reporting of certain  
10 information to West Virginia Department of Health and Human Resources' Bureau for  
11 Behavioral Health; requiring West Virginia Department of Health and Human Resources'  
12 Bureau for Behavioral Health to prepare and submit written report to Joint Committee on  
13 Government and Finance and specifying minimum contents; clarifying effect on rights  
14 under the West Virginia Fair Housing Act; providing sunset date; requiring award of  
15 reasonable attorney's fees against recovery residence in certain instances; and requiring  
16 recovery residence file petition for summary relief for wrongful occupation of residential  
17 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; pilot program.**

1 (a) The purpose of this section is to create a pilot program in Cabell County to study the  
2 uniqueness of recovery residences as they relate to landlord-tenant law and determine an  
3 equitable resolution when circumstances arise which bring about an unanticipated cessation of an  
4 individual's participation in a recovery residence's 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 and applies  
7 solely to recovery residences located within Cabell County.

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

10 (3) "Resident" means a person residing in and receiving services from a recovery  
11 residence.

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

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

17 (2) Sexual misconduct;

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

19 or

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

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

29 (e) If a resident is discharged, evicted, or otherwise removed from a recovery residence  
30 prior to the expiration of the time period for which he or she has previously paid rent or any other

31 fee for residency or services, the recovery residence shall issue a refund of the rent or fee to the  
32 discharged resident in an amount prorated, on a per diem basis, to account for the remainder of  
33 that time period.

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

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

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

53 (i) On or before July 1, 2023, the Department of Health and Human Resources' Bureau for  
54 Behavioral Health shall prepare and submit to the Joint Committee on Government and Finance a  
55 written report which includes, at a minimum:

56 (1) The information specified in subsection (h) of this section for the period May 1, 2022,

57 through May 1, 2023;

58 (2) An evaluation of the effectiveness of the pilot program;

59 (3) A recommendation as to whether the pilot program created in this section should be  
60 continued, reduced, expanded, terminated, or otherwise modified;

61 (4) Any recommended legislation; and

62 (5) Any other issues deemed relevant.

63 (j) This section shall not be construed to affect rights under the West Virginia Fair Housing  
64 Act, W. Va. Code §5-11A-1 et seq.

65 (k) This section shall be of no further force and effect on May 1, 2024.

## **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 as defined in §37-6-5a  
9 of this code, the recovery residence is required to comply with the provisions of this article, and if  
10 the recovery residence's noncompliance is willful or not in good faith, the court shall also award  
11 reasonable attorney's fees.

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

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

16           (d) The amendments to this section enacted by the Legislature during the 2023 Regular  
17 Session shall not be construed to affect rights under the West Virginia Fair Housing Act, W. Va.  
18 Code §5-11A-1 et seq.

19           (e) This section shall not apply to a resident of a recovery residence as defined in §37-6-5a  
20 of this code after May 1, 2024.

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

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

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

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

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

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

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

25 (d) The amendments to this section enacted by the Legislature during the 2023 Regular  
26 Session shall not be construed to affect rights under the West Virginia Fair Housing Act, W. Va.  
27 Code §5-11A-1 et seq.

28 (e) This section shall not apply to a resident of a recovery residence as defined in §37-6-5a  
29 of this code after May 1, 2025.