

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 1312

(Delegate Wilkins)

Judiciary and Environment and  
 Transportation

Judicial Proceedings

**Landlord and Tenant - Eviction Actions - Catastrophic Health Emergencies**

This emergency bill prohibits the court from issuing any judgment for possession or repossession, or a warrant of restitution of possession or repossession, during, and for specified periods after, a catastrophic health emergency. These prohibitions apply in failure to pay rent and breach of lease actions if, in addition to other requirements, the tenant can demonstrate to the court, through specified means, that the tenant suffered a “substantial loss of income.” The bill’s provisions are applicable only to residential leases. The bill also prohibits a landlord – during a catastrophic health emergency only – from (1) increasing a tenant’s rent or (2) charging specified fees and fines. Finally, the bill requires the Judiciary to collect, compile, maintain, and publish on its website specified eviction data, and submit an annual report to the Governor and the General Assembly.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$110,000 in FY 2021 for one-time programming costs and *likely* increase minimally through FY 2022 due to an increased workload for the District Court, as discussed below. Revenues are not materially affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	110,000	-	0	0	0
Net Effect	(\$110,000)	(\$-)	\$0	\$0	\$0

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** Meaningful.

## Analysis

### **Bill Summary:**

#### *Data Collection and Publication*

The Judiciary must collect, compile, maintain, and publish eviction data every two weeks on the Judiciary's website. "Eviction data" means, in regards to specified actions, the (1) zip code and census tract of the subject premises in Baltimore City and in each county of the State; (2) date of execution of the warrant or writ; and (3) type of action from which the warrant or writ was issued.

The Judiciary must report to the Governor and the General Assembly on the eviction data on or before August 31 each year, with the first report due by August 31, 2022.

#### *Substantial Loss of Income and Affirmative Defense*

The bill authorizes a tenant to raise a "substantial loss of income" as an affirmative defense in an eviction proceeding during a "catastrophic health emergency." If the emergency has been declared for 60 to 179 consecutive days, the tenant may raise a substantial loss of income as an affirmative defense in an eviction proceeding for up to three months following the catastrophic health emergency. If the catastrophic health emergency has been declared for 180 consecutive days or longer, the tenant may raise the affirmative defense for up to six months following the emergency.

The bill prohibits the court from issuing any judgment for possession or repossession/warrant of restitution of possession or repossession of residential property in failure to pay rent actions, if a tenant can demonstrate to the court, through documentation or other objectively verifiable means, that (1) the tenant has suffered a "substantial loss of income" and (2) due to this loss of income, the tenant is unable to pay rent or utility fees or will be homeless if the tenant is evicted. The bill establishes similar restrictions for breach of lease actions if the tenant has suffered a substantial loss of income and the alleged breach of lease was caused by or related to the tenant's loss of such income.

These prohibitions may not be construed to interfere with failure to pay rent and breach of lease actions, except as specifically provided in the bill, or to relieve any person of any obligation to make payments or comply with any other obligation that the person may have under a lease.

"Substantial loss of income" means a substantial loss of income resulting from a catastrophic health emergency proclamation, including a substantial loss of income due to

job loss, reduction in compensated hours of work, closure of place of employment, or the need to miss work to care for a home-bound, school-age child.

The bill incorporates the definition of “catastrophic health emergency” contained in § 14-3A-01 of the Public Safety Article. Under that section, a “catastrophic health emergency” is a situation in which extensive loss of life or serious disability is threatened imminently because of exposure to a deadly agent.

#### *Prohibition on Rent or Fee Increases*

During a catastrophic health emergency, landlords are prohibited from (1) increasing a tenant’s rent or (2) charging a tenant a fine or fee for the nonpayment or late payment of rent, including late fees, administrative fees related to rent, collection fees, court costs not awarded by a court, or liquidated or other damages for nonpayment or late payment of rent.

**Current Law:** In general, a landlord seeking to evict a tenant initiates the process by filing the appropriate action (*e.g.*, failure to pay rent, breach of lease, etc.) in the District Court. If awarded a judgment by the court, the landlord files a warrant of restitution, which, once reviewed and signed by the court, authorizes an eviction. The warrants of restitution are forwarded to the local sheriff’s office, who is then authorized to carry out the evictions. Statute sets forth numerous specific requirements for such actions, including those related to written notice prior to filing certain actions.

In failure to pay rent actions, if judgment is in favor of the landlord and the tenant does not return the premises to the landlord or otherwise satisfy the judgment by paying the applicable rent and late fees within 4 days, as specified, the court must, at any time after 4 days have elapsed, issue a warrant of restitution. The court may, upon presentation of a certificate signed by a physician certifying that surrendering the property within the 4-day period would endanger the health or life of the tenant or other occupant, extend the time for surrender of the premises as justice may require, up to 15 days. Statutory provisions also authorize stays of execution in other specified circumstances, such as in the event of extreme weather conditions.

If the landlord does not order a warrant of restitution within 60 days from either the date of judgment or the expiration date of any stay of execution (whichever is later), then (1) the judgment for possession must be stricken and (2) the judgment must generally count toward the threshold for the number of judgments at which a tenant no longer has the right to redemption of the leased premises, as specified.

**State Expenditures:** General fund expenditures increase by \$110,000 in fiscal 2021 for programming changes. Although these programming changes will generally facilitate the ongoing data collection and publication of eviction data as required under the bill, the

Judiciary advises that workloads for landlord-tenant actions are also impacted by the bill's other requirements.

The Judiciary notes that landlord-tenant matters routinely represent a high volume of the cases filed in the District Court each year. *For example*, in fiscal 2019, 669,427 failure to pay rent cases (which represent the largest volume of landlord-tenant related actions) were filed in the State; that same year, 230,968 landlord-tenant cases resulted in a warrant of restitution. Although there are some existing restrictions on eviction actions under an executive order and an order from the U.S. Centers for Disease Control and Prevention (CDC), these prohibitions are generally effective *during* the declared state of emergency or through June 30, 2021, respectively. Under the bill, tenants are specifically authorized to raise a substantial loss of income as an affirmative defense for *up to six months following* a catastrophic health emergency. The Judiciary anticipates that hearing times (and postponements) may increase as tenants produce, and the courts examine, appropriate documentation of a substantial loss of income and otherwise facilitate this affirmative defense. Accordingly, general fund expenditures *likely* also increase minimally (in addition to the programming costs noted above) to reflect an overall increased workload for the District Court. However, any expenditures associated with this impact, in regards to the current catastrophic health emergency, are likely realized only through fiscal 2022.

**Small Business Effect:** Small business landlords may be adversely affected due to the specified restrictions on judicial action related to a catastrophic health emergency. In regard to the current catastrophic health emergency, while some of the provisions within the bill generally align with provisions that are already in effect pursuant to an executive order/ CDC order, the bill expands protections for periods of time *after* a health emergency. Landlords are also prohibited from increasing rent or charging specified fines or fees during a catastrophic health emergency.

**Additional Comments:** On March 5, 2020, Governor Lawrence J. Hogan, Jr., declared a state of emergency and catastrophic health emergency in an effort to control and prevent the spread of COVID-19. The state of emergency was most recently renewed on March 18, 2021. For additional information, see the **Appendix – COVID-19**.

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## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** SB 910 (Senator Smith) - Judicial Proceedings.

**Information Source(s):** Montgomery and Prince George's counties; City of Havre de Grace; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Legislative Services

**Fiscal Note History:** rh/jkb  
First Reader - February 17, 2021  
Third Reader - March 31, 2021  
Revised - Amendment(s) - March 31, 2021  
Revised - Updated Information - March 31, 2021

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## Appendix – COVID-19

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In December 2019, a novel strain of coronavirus known as severe acute respiratory syndrome coronavirus 2 emerged in Wuhan, China. Coronavirus disease (COVID-19) is an infectious disease caused by this virus. As the number of cases spread globally by March 2020, the World Health Organization declared COVID-19 a pandemic.

### *Testing, Cases, and Deaths in Maryland*

Maryland's first three confirmed cases of COVID-19 were recorded on March 6, 2020, with the first two deaths occurring March 16, 2020. As of January 27, 2021, Maryland reported a total of 346,559 confirmed cases, 31,468 individuals ever hospitalized, and 6,821 confirmed deaths. The jurisdictions with the highest number of cases have been Prince George's, Montgomery, and Baltimore counties and Baltimore City. Statewide, 8.4% of cases (28,954) and 45.9% of COVID-19 deaths (3,130) occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes). Updated data on COVID-19 in Maryland is available on the Maryland Department of Health (MDH) dashboard: <https://coronavirus.maryland.gov>.

### *Vaccines*

In December 2020, the U.S. Food and Drug Administration approved both Pfizer-BioNTech and Moderna's COVID-19 vaccines for emergency use. Due to limited quantities, distribution began with priority groups as determined by states. Maryland began distribution in January 2021 with Phase 1A, which includes health care workers, residents and staff of nursing homes, first responders, public safety, corrections staff, and front-line Judiciary staff. Phase 1B began January 18, 2021, and includes residents of assisted living facilities and other congregate settings, adults age 75 and older, staff of K-12 schools and child care facilities, high-risk incarcerated individuals, and those involved in continuity of government. As of January 27, 2020, the State is in Phase 1C, which includes adults aged 65 and older, additional public safety and public health workers, and essential workers in food/agriculture, manufacturing, public transit, and the postal service. Phase 2 will include individuals aged 16 to 64 at increased risk of severe illness, incarcerated adults, and remaining essential workers. Phase 3 will include the general public. As of January 27, 2021, 852,625 doses of the vaccine have been distributed, and 419,579 doses have been administered (363,282 first doses and 56,297 second doses). Updated data is available on the MDH dashboard: [coronavirus.maryland.gov/#Vaccine](https://coronavirus.maryland.gov/#Vaccine).

## *Declaration of a State of Emergency and Initial Executive Orders*

On March 5, 2020, Governor Lawrence J. Hogan, Jr. declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times (most recently January 21, 2021), initiated a series of executive actions, including moving the Maryland Emergency Management Agency to its highest activation level, activating the National Guard, and closing all public schools. The Governor then ordered the closure of in-house dining at bars and restaurants and banned mass gatherings of more than 50 people. This action was followed by a more extensive stay-at-home order on March 30, 2020, requiring closure of all nonessential businesses. This order remained in effect until May 15, 2020.

## *Emergency Legislation*

Chapters 13 and 14 of 2020 (the COVID-19 Public Health Emergency Protection Act of 2020) authorized the Governor, for the duration of the emergency, to take actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the state of emergency and catastrophic health emergency. The Acts also authorize the Secretary of Labor to determine certain individuals eligible for unemployment insurance (UI) benefits due to COVID-19. The Acts terminate April 30, 2021.

## *Subsequent Executive Orders and Advisories*

Since March 2020, the Governor has issued numerous executive orders relating to COVID-19, including (1) closing Maryland ports and harbors to passenger vessels; (2) expanding child care access; (3) expanding the scope of practice for health care practitioners, activating the Maryland Responds Medical Reserve Corps, controlling and restricting elective medical procedures, closing adult day care centers, and providing additional health care regulatory flexibility; (4) augmenting emergency medical services; (5) prohibiting price gouging; (6) fast tracking lab testing processes; (7) authorizing expanded telehealth services; (8) delegating authority to local health officials to control and close unsafe facilities; (9) extending certain licenses, permits, and registrations; (10) authorizing remote notarizations; (11) prohibiting evictions of tenants suffering substantial loss of income due to COVID-19, additionally prohibiting certain repossessions, restricting initiation of residential mortgage foreclosures, and prohibiting commercial evictions; (12) regulating certain businesses and facilities and generally requiring the use of face coverings; (13) establishing alternate health care sites and authorizing regulation of patient care space in health care facilities; and (14) implementing alternative correctional detention and supervision.

## *Federal Legislation Regarding COVID-19*

Five federal emergency bills have been enacted to address the COVID-19 pandemic:

- the **Coronavirus Preparedness and Response Supplemental Appropriations Act**, which provided \$8.3 billion in emergency funds for federal agencies (including \$950 million through the U.S. Centers for Disease Control and Prevention for state and local response);
- the **Families First Coronavirus Response Act**, which addressed emergency family and medical leave and paid sick leave, specified insurance coverage of COVID-19 testing, and provided additional funding for nutrition assistance programs and unemployment benefits;
- the **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, which included a Coronavirus Relief Fund for state and local governments; an Education Stabilization Fund for states, school districts, and institutions of higher education; a Disaster Relief Fund for state and local governments; additional funding for public health agencies to prevent, prepare for, and respond to COVID-19; funding for transit systems; an expansion and extension of eligibility for UI benefits, and additional temporary unemployment compensation of \$600 per week; \$349 billion for the establishment of the Paycheck Protection Program (PPP); a \$500 billion lending fund for businesses, cities, and states; and Economic Impact Payments to American households of up to \$1,200 per adult and \$500 per child;
- the **Paycheck Protection Program and Health Care Enhancement Act**, which provided an additional \$310 billion to PPP, \$75 billion for health care providers, \$60 billion for small business disaster loans, and \$25 billion for increased testing capacity; and
- the **Consolidated Appropriations Act, 2021, and Other Extensions Act**, which included \$908 billion in relief, including another \$284 billion for PPP, \$82 billion for schools, \$45 billion for transportation, \$25 billion in emergency assistance to renters, \$20 billion for vaccine distribution, \$13 billion for a major expansion in Supplemental Nutrition Assistance benefits, \$13 billion for agriculture and rural programs, \$10 billion for child care assistance, extended federal unemployment benefits of up to \$300 per week, extended the federal moratorium on evictions through January 31, 2021, and provided a second stimulus payment of up to \$600 per person.



## *Federal Funding for Maryland to Address COVID-19*

The CARES Act and the Families First Coronavirus Response Act provided Maryland with a significant amount of federal aid. More than \$6 billion in assistance has been made available to the State and local governments, including an enhanced federal matching rate for Medicaid. More than \$900 million was directly provided to local governments. The largest and most flexible portion of CARES Act funding is the Coronavirus Relief Fund, which totals \$2.3 billion, \$691 million of which was allocated directly to Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

CARES Act funding also included \$800 million for the Disaster Recovery Fund; \$696 million for transit grants; \$575 million in enhanced Medicaid matching funds (through December 2020); \$239 million in CDC grants; \$108 million for airports; \$74 million for community development block grants; \$50 million for homelessness assistance; \$46 million for grants for local education agencies and higher education institutions; \$46 million for child care and development block grants; \$36 million for public housing and rental assistance grants; \$24 million for community health centers; \$20 million for senior nutrition; \$19 million for energy assistance; \$18 million for justice assistance grants; \$17 million for administration of the UI program; \$14 million for community service block grants; \$13 million for emergency food assistance; \$8 million for Head Start; \$8 million for the Women, Infants, and Children program; and \$7 million for election security.

The Consolidated Appropriations Act is estimated to provide Maryland with \$1.2 billion for education (including \$869 million for K-12 education, \$306 million for higher education, and \$57.7 million for the Governor's Fund); \$1.1 billion for transportation (including \$830.3 million for transit in the Washington, DC area, \$149.3 million for highways, \$76.2 million for transit in Baltimore, \$22.5 million for airports, and \$9.1 million for rural area grants); more than \$475 million for health (including \$335.6 million for testing, \$75.3 million for vaccines, \$32.6 million for mental health assistance, and \$31.9 million for substance use assistance); \$402.4 million for rental assistance; and \$140.6 million for human services (including \$130.4 million for child care).