

# Testimony

Uploaded by: Chris Grimm

Position: FAV



Chairman Smith, Members of the Judicial Proceedings Committee, LeaseLock appreciated the opportunity to submit testimony in support of Senate Bill 1167.

### **Providing an Alternative to the Traditional (and Expensive) Security Deposit**

For many Marylanders, security deposits, which could be up to two months' rent, represent a significant barrier to rental housing. Security deposits are necessary to protect landlords from lost rent or damage to their property. As we all know, at the end of a lease, landlords can withhold a tenant's security deposit or charge the tenant for damages above the security deposit amount. If a landlord wrongly withholds a deposit or charges the tenant, it is up to the tenant to sue the landlord and prove that the landlord is in the wrong to get their money back.

There had to be a better alternative that mitigates barriers to housing and protects landlords.

LeaseLock provides a solution to the traditional security deposit that operates extremely well in 47 states. Under LeaseLock, a landlord provides a tenant the option to waive the security deposit and instead pay a monthly fee that averages \$39 dollars a month. The landlord will then purchase insurance from LeaseLock to pay a tenant's failure to pay rent or for damages to the unit, up to their coverage cap.

The deposit waiver fee works much like Primary Mortgage Insurance, which allows home buyers to pay for insurance that waives another significant housing barrier -- the 20% down payment. In both situations, neither the tenant nor the home buyer is insured, but they pay a fee that covers the other party's insurance because there is higher risk: for the bank there is risk because the home buyer has less equity, and for the landlord, there is risk by not requiring a security deposit.

### **LeaseLock Operates Effectively in 47 States**

In 47 states, LeaseLock insures more than 1,000 properties, covering more than 100,000 units. To date, we are unaware of any issues with tenants paying deposit waiver fees. LeaseLock goes to great lengths to ensure that landlords present tenants with a very clear option and that they understand the value proposition: a large upfront security deposit, that may be refundable or a monthly fee to waive the security deposit. We operated in Maryland from 2016 to 2021 without any issues before agreeing to cease working with landlords to offer deposit waiver fees in the state.

Along with Massachusetts and Oregon, Maryland is one of only three states that do not allow landlords to offer tenants a deposit waiver fee option. These three states do not specifically restrict landlords from offering a deposit waiver fee. However, Maryland's Attorney General has interpreted the definition of a

security deposit to include a deposit waiver fee, which means the fees would have to be refundable and is incompatible with a fee.

Massachusetts and Oregon restrict the fees a landlord can charge to those specifically listed in the statute, laws that pre-date LeaseLock. However, the Massachusetts Joint Housing Committee recently passed [H 1316](#), legislation that allows deposit waiver fees, favorably out of committee.

Moreover, several states have passed laws expressly authorizing deposit waiver fees. In 2022, the Washington Legislature unanimously passed through both houses, and the governor signed [HB 2064](#), codifying landlords' ability to offer tenants a fee in lieu of a security deposit. The legislation was crafted with significant input from tenant rights organizations, including the Kings County Bar Association Housing Justice Project. SB 1167 is heavily based on the Washington law, with some additional projections.

Last year, Florida passed HB 133 out of both houses with a substantial, bi-partisan majority, and the law was signed by the governor. In 2021, with significant input from Texas Appleseed, a consumer advocacy organization, the Texas Legislature passed SB 1783 unanimously out of the Senate, and with an overwhelming, bi-partisan majority out of the House, the governor signed the bill.

### **SB 1167 Provides the Most Significant Tenant Protections in the Nation**

We have worked tirelessly with the Office of the Attorney General and tenant advocates and have continuously added provisions to this bill over four years. Senate Bill 1167 provides more tenant protections than any other state. Maryland would be the only state to cap the total amount of waiver fees a tenant could pay over a tenancy to two months' rent and would be the only state that requires insurers like LeaseLock to be an admitted product instead of surplus lines. No other state has such requirements.

#### ***Additional tenant protections in the bill include:***

- The landlord shall disclose in writing the fee amount and security deposit required, the frequency of payment, whether the fee is non-refundable, and that the tenant is still responsible for paying to repair damages and their rent.
- A tenant may opt out of the fee in lieu of a security deposit upon providing a landlord with the security deposit.
- A landlord must use the fee to purchase insurance to cover the tenant's failure to pay for damages or rent.
- The fee is capped to what it costs the landlord to obtain and administer the insurance, and a tenant cannot pay more than two month's rent in waiver fees over the course of a tenancy.
- A landlord shall not charge a tenant for normal wear and tear.
- A landlord shall not alter the fee amount during a lease term.

- The landlord must comply with all notice and inspection requirements per the security deposit law, including providing the tenant documentation of any damages and receipts for damages repaired.
- Provides for penalties if a landlord cancels a fee in lieu of a security deposit during a tenancy or fails to procure or maintain insurance.
- Restricts landlords from “double-dipping,” charging a tenant for damages an insurer covered in a claim.
- Provides for restitution to tenants if landlords or insurers violate the rules laid out in the bill.

### **Opposition Amendments Go Far Beyond the Scope of the Bill**

We hoped that our additions would ease the Office of the Attorney General’s concerns, but despite the significant additions and that Maryland would have the most robust bill in the country, that is not the case. The opposition has insisted that any bill authorizing deposit waiver fees must also require landlords to accept security deposits in installment payments and that a deposit waiver fee shall not be considered rent. Both of these issues go well beyond the scope of our bill and are topics that this committee knows are controversial. We have encouraged the opposition to introduce their own legislation to achieve this goal. Yet, they have chosen not to do so and continue to try and use our bill as a vehicle for their ambitious policy agenda.

Similarly, a requested amendment that states “fee shall not be considered rent” creates a precedent far beyond SB 1167’s scope, as this would be the first time the Maryland statute attempts to define what is and is not rent. We understand the concerns that tenants should not be evicted for a failure to pay a \$39 fee and have offered to clarify that a failure to pay a deposit waiver fee would not be grounds for eviction under § 8–401 but would be allowed under § 8–402, which allows the court to determine if a failure to pay a fee rises to the level of a material breach that would warrant an eviction. Our offer was rebuffed.

### **Marylander Renters Deserve a Good Alternative to the Traditional Deposit**

The bill before the committee represents a robust bill that provides tenants with an option that might make it easier for some to access rental housing. It is not the right choice for everyone or a cure for Maryland’s housing woes, but it is a good option that nearly 70% of Maryland voters would welcome.

We urge the Committee to consider passing the strongest bill in the country regulating deposit waiver fees and join the 47 states in which we currently operate.

## **Help Maryland Renters Access Better Housing Allow Alternative to Security Deposits**

**Waiving Security Deposits:** A Renter's most significant housing barrier is the advance payment of first and last month's rent plus a security deposit. A "deposit waiver fee" offers tenants an option to pay a small monthly "fee" (avg \$35) instead of a large upfront security deposit. This option is a win-win for landlords and tenants. Landlords are still protected against a tenant's failure to pay for damages or rent by purchasing insurance, and tenants can waive the high upfront cost of a security deposit. The deposit waiver fee works much like Primary Mortgage Insurance, which allows home buyers to waive another significant housing barrier, the 20% down payment, by paying for the bank's insurance. In both situations, neither the tenant nor the home buyer is insured, but they pay a fee that covers the other party's insurance.

Unfortunately, Maryland is one of only four states that does not permit landlords to offer tenants this option. A 2023 poll of 400 Maryland voters who rent found:

- 69% would welcome the fee option.
- 45% would take advantage of the fee option with the understanding that it is not refundable and they are responsible for unrepaired damages at the end of the lease.

### **Legislative Proposal:**

Maryland's current definition of a security deposit is extremely broad. LeaseLock proposes legislation to permit landlords to offer tenants a fee in lieu of a security deposit and introduce several common-sense protections for tenants.

- The landlord shall disclose in writing the fee amount and security deposit required, the frequency of payment, whether the fee is non-refundable, and that the tenant is still responsible for paying to repair damages and their rent.
- A tenant may opt out of the fee in lieu of a security deposit upon providing a landlord with the security deposit.
- A landlord must use the fee to purchase insurance to cover the tenant's failure to pay for damages or rent.
- The fee is capped to what it costs the landlord to obtain and administer the insurance, and a tenant cannot pay more than two month's rent in waiver fees over the course of a tenancy.
- A landlord shall not charge a tenant for normal wear and tear.
- A landlord shall not alter the fee amount during a lease term.
- The landlord must comply with all notice and inspection requirements per the security deposit law, including providing the tenant documentation of any damages and receipts for damages repaired.
- Provides for penalties if a landlord cancels a fee in lieu of a security deposit during a tenancy or fails to procure or maintain insurance.
- Restricts landlords from "double-dipping," charging a tenant for damages an insurer covered in a claim.
- Provides for restitution to tenants if landlords or insurers violate the rules laid out in the bill.

# Survey: Maryland Renters Overwhelmingly Support Security Deposit Alternatives

## *Small Fees Instead of Big Deposits Can be Life-Changing*

### Overview

The Data Catalyst Institute surveyed 400 Maryland renters who are likely voters (Voter/Renters). Each was asked about their access to housing and explored whether innovative security deposit alternatives can meaningfully enhance their access to and choice of higher-quality housing.

Maryland Voter/Renters clearly understand why landlords need a security deposit, but:

- Renters are financially challenged by requirements to pay up to three months' rent (first and last month's rent and a security deposit) on move-in day.
- Too many Marylanders can afford rent but not the security deposit. The security deposit barrier meant a lack of choice in housing and schools and forced Marylanders into longer commutes.
- Maryland renters say they want to be given a choice to pay a small, non-refundable monthly fee to their landlord as an alternative to a large up-front security deposit.
- Voters would vote for legislators who support legislation that ensures landlords can offer security deposit alternatives.

### Key Findings

- 61% said it was difficult to come up with their last security deposit.
- 61% said that a smaller security deposit would mean better housing for their family.
- 45% at some point couldn't afford the security deposit
- As a result of not affording the deposit, renters were forced to accept housing that was
  - smaller (47%)
  - in worse/less safe neighborhoods (41%)
  - farther from work (25%)
  - in lower-quality school districts (20%)
- 85% said they could have spent the security deposit money on more important things

- 76% were not aware that some landlords offer an optional deposit waiver fee
- 69% would welcome the fee option
  - 67% would have liked the option of paying a small monthly fee at some point in the past
  - 65% have family or friends who would have liked this option because they could move into new housing sooner or afforded nicer housing
- 45% would choose the nonrefundable fee option, knowing the fee was nonrefundable and they would still be responsible for damage or lost rent.
- 70% would support legislators who support legislation ensuring that landlords can offer new tenants the option of paying a small monthly fee instead of a big up-front deposit

**Methodology:**

The poll of 400 renters that are also likely voters was conducted by the Data Catalyst Institute, Nov 6-15, 2022, with a margin of error of +/- 4.0%

## Frequently Asked Questions - 2024 Fee in Lieu of a Security Deposit

1. What is LeaseLock, and how does it work?
  - a. LeaseLock provides landlords with insurance to guard against a tenant's failure to pay for damages or rent. When landlords work with LeaseLock, they can offer tenants the option of a traditional security deposit or a monthly fee to waive the security deposit. The landlord would then use that fee to cover the premium associated with that tenant's unit. The tenant is presented with these options before they sign their lease, with all the costs disclosed. The tenant is also reminded that they are still responsible for the terms of their lease, including paying for rent and not causing damage beyond wear and tear. The deposit waiver fee is only in exchange for not having to provide a security deposit at move-in.
  
2. How many U.S. insurance companies offer landlords this type of coverage?
  - i. LeaseLock is currently the only provider we know that offers this type of insurance, as it is a wholly new type of insurance. Creating legislative certainty around deposit waiver fees would encourage more providers to enter the space.
  - ii. Other security deposit alternatives on the market exist, such as surety bonds (Rhino, Jetty) that are already authorized by Maryland law and guarantor services (One App).
  
- b. How long has the product been used in the U.S. per company?
  - i. LeaseLock has been operating since 2016 and operated in Maryland from 2016-2021.
  
2. What complaints have there been regarding the product across the U.S., even if small?
  - a. We know that more than 100,000 tenants have opted to pay deposit waiver fees. We are unaware of any complaints filed by tenants who pay deposit waiver fees regarding those fees.
  
3. What happens if there are damages or unpaid rent at the end of a tenancy? There is no security deposit to withhold, so what does the landlord do?
  - a. Tenants are always responsible for paying their rent and not damaging their apartments. At the end of a tenancy, a landlord would conduct a walkthrough and notify the tenant of any damage. If money is owed to a landlord for damages or unpaid rent, the landlord would bill the tenant. If the tenant fails to pay in 30 days, the landlord will submit a claim to LeaseLock. If it is a valid claim, LeaseLock will pay the claim to the landlord up to the coverage amount. If the tenant owes more than LeaseLock provides in coverage, the landlord may still try to collect the balance from the tenant.
  - b. While Maryland insurance law provides for the ability of an insurer to seek reimbursement from the party responsible for damages, LeaseLock does not pursue its subrogation rights and does not attempt to collect from tenants.



- c. Subrogation rights exist in all forms of insurance. The damaging party is always responsible for paying for those damages. For example, if someone dents someone's car with a shopping cart, the car owners' insurance policy may cover the damage, but they will pursue the person who caused it.
    - d. These subrogation rights also apply to other products, such as surety bonds. Surety bond providers always exercise their subrogation rights against tenants and are expressly authorized to do so under Maryland law.
- 4. Are deposit waiver fees refundable if a tenant does not cause any damage and pays their rent?
  - a. Deposit waiver fees are not a deposit and are therefore not refundable. They are a fee a tenant opts to pay to waive a security deposit requirement.
- 5. If tenants pay these fees for the landlord's insurance, should they also be covered and not liable for damages or lost rent?
  - a. When tenants pay deposit waiver fees, they are not purchasing insurance or are insured. They simply pay to remove a security deposit requirement to move into a rental unit.
  - b. It is impossible to allow tenants to move into a unit, pay \$39/month for a month or two, damage a unit, skip out on ten months of rent, and not be responsible for any of it because they paid \$60 in fees.
- 6. What is the difference between a deposit waiver fee and an installment?
  - a. Deposit waiver fees replace the security deposit, so the landlord is not holding on to thousands of dollars of the tenant's money. An installment stretches that requirement out over a certain amount, usually the first six months of a tenancy.
  - b. The downside of installments is that landlords have less security if tenants fail to pay their rent or move out unexpectedly and damage a unit.
- 7. Do other states require installment options for security deposits?
  - a. Washington state does; we are unaware of others, but we believe some states are considering legislation requiring installments.

# **Benson Testimony SB1167.pdf**

Uploaded by: Joanne C Benson

Position: FAV

**JOANNE C. BENSON**  
*Legislative District 24*  
Prince George's County

MAJORITY WHIP

Budget and Taxation Committee

Education, Business and  
Administration Subcommittee

Pensions Subcommittee

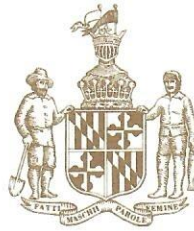
*Joint Committees*

Audit and Evaluation Committee

Children, Youth, and Families

Ending Homelessness

Fair Practices and  
State Personnel Oversight



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**THE SENATE OF MARYLAND**  
**ANNAPOLIS, MARYLAND 21401**

**Testimony – SB1167**  
**Senator Joanne C. Benson**  
**Real Property - Residential Leases - Fee in Lieu of a Security Deposit**

Good afternoon Chairman Smith and Members of the Committee,

I'm here today to ask for your support for Senate Bill 1167. This bill offers a groundbreaking solution to the longstanding issue of security deposits in rental housing, providing a viable alternative that benefits both landlords and tenants.

Traditional security deposits, often equivalent to two months' rent, present a significant financial barrier for many Marylanders seeking rental housing. While these deposits are crucial for landlords to protect against potential damages or unpaid rent, they can also pose challenges for tenants. At the end of a lease, disputes over deposit deductions can lead to legal battles, placing additional burdens on tenants.

This bill provides an innovative solution that has proven successful in 47 states. Tenants have the option to waive the security deposit and instead pay a modest monthly fee, averaging \$39. Landlords then purchase insurance to cover any potential losses due to damages or unpaid rent.

This model parallels the concept of Primary Mortgage Insurance in the homebuying process, where buyers can waive the requirement for a 20% down payment by paying a fee to cover the lender's risk. Similarly, a waiver fee allows tenants to bypass the hefty upfront cost of a security deposit while still providing landlords with financial protection.

Despite its success elsewhere, Maryland currently prohibits landlords from offering deposit waiver fees. This bill aims to rectify this by introducing legislation that not only permits such fees but also includes comprehensive tenant protections. These protections ensure transparency in fee disclosure, limit the total amount tenants can pay over a lease term, and prevent landlords from unfairly charging for damages or altering fee amounts during the lease.

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Testimony – SB1167

Senator Joanne C. Benson

Furthermore, the bill addresses concerns raised by the Office of the Attorney General and tenant advocates over four years of collaboration. It surpasses existing state laws by capping waiver fees, requiring insurers to be admitted products, and instituting penalties for non-compliance.

Survey data underscores the urgent need for deposit alternatives in Maryland. A vast majority of renters struggle with the financial burden of security deposits, with many forced into suboptimal housing arrangements due to affordability constraints. The survey also reveals strong support among voters for legislative measures that enable landlords to offer alternative fee options.

In conclusion, this bill presents a rare opportunity to significantly improve access to rental housing for Marylanders. By embracing this innovative approach and enacting the strongest tenant protections in the nation, Maryland can lead the way in modernizing rental practices while ensuring the interests of both landlords and tenants are safeguarded. Thank you for considering this testimony, and I urge the committee to support Senate Bill 1167.

**SB1167\_MoCoDHCA\_Frey\_FWA.pdf**

Uploaded by: Leslie Frey

Position: FWA



# Montgomery County

## Office of Intergovernmental Relations

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**SB 1167**

**DATE: April 2, 2024**

**SPONSOR: Senator Benson**

**ASSIGNED TO: Judicial Proceedings**

**CONTACT PERSON: Leslie Frey**

**(leslie.frey@montgomerycountymd.gov)**

**POSITION: FAVORABLE WITH AMENDMENTS (Department of Housing and Community Affairs)**

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### **Real Property - Residential Leases - Fee in Lieu of a Security Deposit**

Senate Bill 1167 provides an option for landlords to offer a prospective tenant the payment of a monthly fee, not to exceed two month's rent, in lieu of a security deposit for the duration of a residential lease subject to certain requirements. The tenant may also request to pay the landlord a security deposit instead of the monthly fee at any time and stop paying the monthly fee beginning the month following the payment of the security deposit. Additionally, the bill requires landlords to purchase insurance coverage using the fee collected in lieu of a security deposit, establishes procedures for a landlord who does not purchase insurance coverage, and for an insurer that terminates insurance coverage, among other provisions.

Montgomery County Department of Housing and Community Affairs (MCDHA) supports the policy implications of Senate Bill 1167 as it will remove a barrier faced by many lower-income Marylanders when they seek to rent housing. Prospective tenants may have difficulty providing the security deposit and could benefit from a fee in lieu of a security deposit, which would not be refundable at the time of lease expiration the way a security deposit would be refunded. Landlords would be able to market to tenants the opportunity to avoid the upfront cost of a security deposit, with payments over the term of the lease equal to the security deposit. Tenants would still be responsible for any additional charges for damages beyond reasonable wear resulting from normal use of the premises in addition to the fee.

MCDHCA respectfully requests the following amendments to Senate Bill 1167 (in detail on following page) to eliminate inconsistencies within the bill and to address practical challenges with a timeframe set in the bill. On page 7 line 29, strike the administration fee: tenants should not pay for administration fees which the landlord could set at any level, irrespective of the actual burden of securing insurance. The fee in lieu of the security deposit should only be used for the cost to purchase insurance. On page 8 line 25, strike the provision permitting a landlord to give 60 days' notice prior to terminating a fee in lieu of a security deposit. This provision would allow a landlord to eliminate the ability of the tenant to use the fee in lieu of a security deposit in the middle of a lease, therefore allowing a landlord to breach the lease so long as they give notice. This would be unfair to tenants and practically speaking would not be logical, as the tenant would then have to move to a security deposit after already signing a lease providing for a fee in lieu of a security deposit. On page 9 line 10, amend the language to give landlords 45 days to evaluate the property on the termination of the tenancy and determine any costs incurred. As drafted, landlords would immediately need to know the costs incurred by the tenant which is not practical, and it would align the timeframe given to landlords to evaluate costs if a tenant had paid a security deposit. Finally, notice should be given to the tenants by certified mail sent to their last known address as with other provisions in the bill.

MCDHCA urges the committee to issue a favorable report on Senate Bill 1167 with these amendments.

AMENDMENTS TO HOUSE BILL 1108  
(First Reading File Bill)

AMENDMENT NO. 1

On page 7, in line 31, strike “**AND ADMINISTERING**”.

AMENDMENT NO. 2

On page 8, in line 25, strike beginning with “**A**” continuing though “**(5)**” in line 27.

AMENDMENT NO. 3

On page 9, in line 3, strike “**(6)**” and insert “**(5)**”.

AMENDMENT NO. 4

On page 9, in line 10, strike “**ON**” and substitute “**WITHIN 45 DAYS OF**”; in line 12 after “**SHALL**” insert “, **BY CERTIFIED MAIL,**”.

**SB1167 JPR testimony.pdf**

Uploaded by: Casey Santora

Position: UNF



The **HOLLAND LAW FIRM**  
for Consumer Rights

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**Testimony to the Senate Judicial Proceedings Committee**  
**SB1167**  
**Position: UNFAVORABLE**

April 2, 2024

Senate Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, MD 21401  
cc: Members, Senate Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

The Holland Law Firm, P.C. is a consumer rights law firm, serving ordinary Marylanders impacted by bad business practices.

We oppose SB1167. This bill allows landlords to charge tenants an extra, non-refundable monthly fee, instead of a security deposit. Of course, landlords can already do this: they can choose to charge a higher monthly rent, and non-security deposit.

The real function of this bill is to introduce third-party insurers chosen by *landlords* not *tenants*, into the landlord-tenant relationship. Md Code Ann., Real Prop. §8-203(i) already allows *tenants* to purchase surety bonds from insurers of their choice. SB1167 would allow the landlord to choose the insurer instead. This will lead to abuses:

- Insurers under SB1167 will have no incentive to maintain a good reputation with tenants, because tenants will have no role in choosing their insurer. But insurers will face collection activity and litigation with the insurer if it allows an insurance claim.
- Landlords under SB1167 will be able to charge more than insurance costs. The Amount of the “fee in lieu” under SB1167 is not required to bear any relationship to the costs of the insurance the landlord obtains. Landlords will be able to profit from the fee, which is not true of security deposits or surety bonds.
- Tenants under SB1167 would pay more in the long term. The bill limits the “fee in lieu” to the equivalent of 2 months rent “over a single tenancy.” But tenancies are often renewed, and over many years, tenants would pay far more in non-refundable fees in lieu than they would in a refundable security deposit.
- Tenants under SB1167 would face two rounds of collection for alleged breach of lease cases involving substantial sums of money. A major participant in this market, LeaseLock, submitted testimony in 2021, explaining that it wrote insurance for \$5,000 in rent and \$500 in physical damage. In our experience, it

is not unusual for landlords to seek more than these amounts, especially in alleged physical damage. Under the SB1167 scheme, the insurer would pay out the limits of its policy to the landlord, and demand that the tenant pay the remainder, while at the same time, the landlord would demand that the tenant pay the excess, beyond the policy limits, even to the extent that a tenant could have two separate collection entries made on their credit reports and two separate lawsuits filed against them from the same transaction.

The General Assembly has rejected legislation like this before. See 2021 SB892. It should do so again with SB 1167

We urge an unfavorable report.

By:

/s/ *Emanwel J. Turnbull*

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# **SB 1167\_Oppose\_Consumer Protection Division\_2024\_F**

Uploaded by: Kira Wilpone-Welborn

Position: UNF

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*Deputy Attorney General*

**LEONARD J. HOWIE III**  
*Deputy Attorney General*

**CHRISTIAN E. BARRERA**  
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**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*

**PETER V. BERNS**  
*General Counsel*



**ANTHONY G. BROWN**  
*Attorney General*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

**WILLIAM D. GRUHN**  
*Chief*  
Consumer Protection Division

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April 1, 2024

To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: Kira Wilpone-Welborn, Assistant Attorney General  
Consumer Protection Division

Re: Senate Bill 1167 – Real Property - Residential Leases - Fee in Lieu of Security Deposit  
(OPPOSE)

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The Consumer Protection Division of the Office of the Attorney General (the “Division”) opposes Senate Bill 1167 sponsored by Senator Joanne Benson. The “fee in lieu of a security deposit” product purports to provide consumers a reasonable alternative to paying a lump sum security deposit or obtaining a surety bond by allowing landlords and tenants to agree to a fee, which the landlord would use to purchase insurance coverage. Proponents of the bill assert that this product would reduce barriers to obtaining rental housing. The bill as structured, however, requires consumers to bear all the risk and cost of the product with little to no benefit and could ultimately cause consumers to pay more over the course of a tenancy than they would pay as a security deposit. Most troubling, Senate Bill 1167 would make it easier for landlords to engage in unfair, abusive, or deceptive practices without adequate protections for consumers to obtain legal redress and damages for violations by landlords and insurers.

#### Maryland's Security Deposit Law

Maryland's Security Deposit Law defines “security deposit” to mean “any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and

furnishings.” Md. Code Ann., Real Prop. §8-203(a)(3). Maryland’s Security Deposit law affords consumers who lease residential properties in Maryland important protections from unscrupulous landlords. For example, a landlord may not require a tenant to pay a security deposit that exceeds the equivalent of two months’ rent per dwelling unit, regardless of the number of tenants. Md. Code Ann., Real Prop. §8-203(b). A landlord must maintain security deposits in an account that is devoted exclusively to security deposits and bears interest. Md. Code Ann., Real Prop. §8-203(d). A landlord may only withhold a security deposit for unpaid rent, damage due to breach of lease, or for damage caused by the tenant beyond “ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord” and must provide a tenant a written list of the damages claimed together with a statement of the costs actually incurred. Md. Code Ann., §§8-203(f)(1) and (g)(1). A security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach. Md. Code Ann., Real Prop. §8-203(f)(2).

Alternatively, a tenant can purchase a surety bond to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishings. As with a traditional security deposit under section 8-203, the amount of the surety bond purchased and any security deposit paid may not exceed the equivalent of two months’ rent per dwelling unit. Md. Code Ann., Real Prop. §8-203(i)(3). Importantly, it is the tenant who purchases the bond rather than the landlord and the tenant must be advised in writing of all the tenant’s rights prior to the purchase of the security bond. Md. Code Ann., Real Prop., §8-203(i)(5). Additionally, before making a claim against the surety bond, a landlord must provide written notice to the tenant that includes a list of damages to be claimed and costs actually incurred; and, a tenant has the right to pay any damages directly to the landlord and has the right to dispute a landlord's claim. Md. Code Ann., Real Prop. §8-203(i)(7), (8), and (9).

### Senate Bill 1167 Would Harm Consumers

Senate Bill 1167 does not include many of the protections afforded by the provisions in the Real Property Article related to security deposits and surety bonds. While the proposed “fee in lieu of security deposit” may appear to benefit consumers and open housing opportunities for low-income households, in fact, Senate Bill 1167 would likely harm consumers in several ways.

First, Senate Bill 1167 would permit landlords to collect, at the termination of the tenancy, amounts Maryland’s security deposit and surety bond law do not permit. At subsection 8-203.2(A)(3)(i), Senate Bill 1167 would permit a landlord to collect “fees, costs, or charges required under a lease,” which is inconsistent with language used in § 8-203 referencing deductions from security deposits and § 8-203.1 for surety bond coverage.<sup>1</sup> A “fee in lieu of a

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<sup>1</sup> See Real Property § 8-203(f)(1)(i) (“The security deposit, or any portion thereof, may be withheld for unpaid rent, damage due to breach of lease or for damage by the tenant or the tenant's family, agents, employees, guests or invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord.”; and Real Property § 8-203.1(i)(2)(i) (“...a tenant may purchase a surety bond to protect the landlord against: 1. Nonpayment of rent; 2. Damage due to breach of lease; or 3. Damage caused by the tenant or the tenant’s family, agents, employees, guests or

security deposit” product should be restricted to non-payment or rent, damage due to breach of lease, and damages beyond normal wear and tear, as is currently permitted by Maryland law.

Second, Senate Bill 1167 does not require a landlord who has purchased insurance to disclose to consumers the landlord’s actual costs to obtain the insurance or require that the fee charged to consumers be the actual cost of the insurance. As proposed, the landlord may inflate the monthly charge to consumers for unidentified amounts to “administer the insurance.” Presently, the Real Property Article does not allow landlords to charge for the administration of security deposits or for the administration of surety bonds. As a result, Senate Bill 1167 would permit landlords to charge tenants fees that exceed their costs to obtain insurance and unfairly profit from a tenant’s election to pay the “fee in lieu of security deposit.” By making this product a profit center, the bill encourages landlords to increase current security deposit requirements in order to make the payment of the fee more attractive. Further, the bill does not require a landlord to first apply the portion of the fee charged which is over and above the costs to obtain the insurance, and the interest earned on that money, towards any claimed losses as a result of nonpayment of rent, damage due to breach of lease, or damage to the leased premises before making a claim on the insurance.

Third, because consumers would not be interested parties to the insurance contract, consumers would not be able to make claims to the insurer, appropriately challenge an insurer’s decision to deny a claim, or dispute an insurer’s decision to pay a claim until after the tenant is subject to collection actions. Moreover, if an insurer sought subrogation against a tenant for a claim paid to a landlord or transferred a paid claim to a third-party debt collector as permitted in Senate Bill 1167, a tenant may not have sufficient information to defend the claim or understand a demand for payment of the claim. As a result, the tenant would pay both the monthly fee and to reimburse the paid claim. Thus, the “fee in lieu of security deposit” would ultimately provide no financial benefit to the consumer.

Fourth, Senate Bill 1167 does not clearly identify that the “fee in lieu of a security deposit” is not rent, nor collectable in a summary ejectment action. Even more troubling, as proposed, section 8-203.2(B)(3) states that “an agreement to pay a fee in lieu of a security deposit is not a defense in an action brought by a landlord under § 8-401 of this title for a tenant’s failure to pay rent.” This bill could not only permit a landlord to seek an eviction under section 8-401 for non-payment of this fee, but also bar a tenant from arguing, pursuant to *Sager v. Hous. Comm’n of Anne Arundel Cnty.*, 957 F. Supp. 2d 627 (D. Md. 2013), that the landlord has misallocated her rental payment to these fees and thus does not have a basis to support an action under Real Property § 8-401. As such, at best, tenants continue to be left unprotected by the language in this bill; and, at worst, their rights and defenses to eviction are being discarded.

Finally, Senate Bill 1167 does not adequately protect consumers from landlords that violate the proposed provisions in the bill. As proposed, if a landlord does not use the fees paid by the consumer to purchase insurance coverage, the landlord is not required to return the fees with interest to the consumer or apply the amounts paid by the tenant toward a refundable

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invitees in excess of ordinary wear and tear to the leased premises, common areas, major appliances, or furnishings owned by the landlord.”)

security deposit but is only required to use those funds to cover damage to the unit. As a result, a tenant who does not damage the unit is left without recourse to a landlord that willfully absconds with the monthly payment.

A “fee in lieu of security deposit” is not a reasonable alternative to a security deposit, which is limited in amount, is refundable, and provides consumers protections under section 8-203 of the Real Property Article. Likewise, a “fee in lieu of security deposit” is not a reasonable alternative to a surety bond, which allows a consumer to avoid an upfront security deposit payment by paying a small monthly fee and provides consumers protections as a party to the insurance contract and the financial cap protections under section 8-203 of the Real Property Article.

While reducing barriers to enter the rental housing market is necessary and important, those efforts should not exacerbate current inequities in the law that benefit landlords at the expense of tenants.<sup>2</sup> As proposed, tenants are again expected to pay a monthly fee that only protects the landlord and places all risk of financial insecurity on the tenant. Thus, perpetuating cycles of housing uninhabitability, instability, and homelessness.

For these reasons, the Division encourages the Judicial Proceedings Committee to issue an unfavorable report on Senate Bill 1167.

Cc: The Honorable Joanne Benson  
Members, Judicial Proceedings Committee

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<sup>2</sup> It is well documented that the majority of renters evicted are Black mothers with minor children. *See* Public Justice Center, “Justice Diverted: How Renters are Processed in the Baltimore City Rent Courts,” December 2015; and Matthew Desmond et al., *Forced Relocation and Residential Instability among Urban Renters*, 89 *Soc. Serv. Rev.* 227 (2015).

**sb1167.pdf**

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Position: UNF



HON. STACY A. MAYER  
CIRCUIT COURT  
JUDGE  
BALTIMORE COUNTY  
CHAIR

HON. RICHARD SANDY  
CIRCUIT COURT  
JUDGE  
FREDERICK COUNTY  
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## MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

### MEMORANDUM

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 1167  
Real Property – Residential Leases – Fee in Lieu of Security  
Deposit  
**DATE:** February 22, 2024  
(4/2)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 1167. The proposed legislation establishes Real Property § 8-203.2 which states that a landlord may offer a fee in lieu of a security deposit.

The Judiciary takes no position on the policy aims of the legislation but has several concerns. This bill creates a burdensome and confusing statutory process to incorporate insurance policies of landlords for nonpayment or damage repairs by tenants. Importantly, the bill is unclear as to whether the fee in lieu of payments may be deemed “rent” in summary ejection and as such creates the possibility of inconsistent interpretations of the statute by courts around the State. Additionally, on page 12, the bill references debts that are “declared void” by the Court. This is not a legal term of art with which the Judiciary is familiar and there are no provisions within the bill to determine how such a declaration is to be made.

cc. Hon. Joanne Benson  
Judicial Council  
Legislative Committee

Kelley O'Connor

**\_Written Testimony SBB1167 2024 UNF.pdf**

Uploaded by: Marceline White

Position: UNF



**Testimony to the Judicial Proceedings Committee**  
**SB1167 - Real Property Residential Fee in Lieu of a Security Deposit**  
**Position: Unfavorable**

The Honorable Senator William Smith, Chair  
Senate Judicial Proceedings Committee  
2 East, Miller Senate Office Building  
Annapolis, Maryland 21401  
cc: Members, Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a people-centered movement to expand economic rights, housing justice, and community reinvestment for working families, low-income communities, and communities of color. Economic Action Maryland provides direct assistance today while passing legislation and regulations to create systemic change in the future.

Our Tenant Advocacy program served 893 clients from all parts of the state in 2023. Housing affordability is a common concern and security deposits can be a barrier to safe, stable, and affordable housing. But this is not the right solution for financially struggling renters.

Under current Maryland law, security deposits protect landlords from specific types of damages. Landlords can withhold deposits if they experience losses from unpaid rent, a breach of the lease, or physical damage to the property more than “normal wear and tear.”<sup>1</sup>

Security deposits also protect renters. Because deposits cover unpaid rent and damages, they can reduce claims against renters if they can't pay the rent or property damage occurs. Maryland's laws define what deposits can cover, the maximum amount that can be charged, and outline procedures to prevent disputes or mitigate their effects. Under current law, security deposits are regulated to provide protection while reducing opportunities for exploitation.

SB1167 would create a new product, *Fees in lieu of security deposits* which are not security deposits. Fees in-lieu-of security deposits insure property owners against the renters who are paying for them, but these products provide no protections for renters the way that traditional deposits would. Renters would pay monthly fees that expose them to liability instead of reducing it. Renters are entitled to have their deposits returned with deductions for actual damages to the landlord, but there's no guarantee fees paid under this alternative would be returned.

Under SB1167 it sounds as if the fee is considered rent even though it is not because in the bill non-payment of the fee is the basis for a failure to pay rent action under 8-401. The bill allows the landlord to charge tenants for the cost of administering the fee in lieu which is inappropriate.

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<sup>1</sup> <https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=grp&section=8-203&enactments=false>



Instead, these fees would open renters up to greater liability. This product is extractive for renters already struggling to assemble a security deposit. This housing crisis demands solutions, but exposing lower-income households to extraction and increased liability could make the situation far worse.

We are concerned that this product will lead to an increase in third-party debt collection. Lease Lock may be more likely than a landlord to sell off purported tenant debts to a third-party debt collector, making it more difficult for tenants to later dispute the validity of the purported debt.

Installment payments for security deposits is a reasonable, proven, safe and secure policy to address high-cost security deposits. This policy would promote housing mobility and housing choice without the use of complex financial products that have not been adequately studied.

SB1167 seeks to enshrine a complicated product that shifts liability to the tenant while removing protections under the guise of assistance. SB1167 may lead to increased third party debt collection and extract more costs and protections from vulnerable tenants.

For all these reasons we oppose SB1167 and urge an unfavorable report.

Best,

Marceline White  
Executive Director

# **SB 1167 Public Justice Center UNF.pdf**

Uploaded by: Matt Hill

Position: UNF



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**SB 1167 - Real Property – Residential Leases – Fee in Lieu of Deposit**

**Hearing before the Judicial Proceedings Committee, April 2, 2024**

**Position: OPPOSE (UNFAV)**

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Public Justice Center (PJC) is a non-profit advocacy organization and civil legal services provider that provides advice and representation to over 800 tenants in Maryland each year. Numerous tenants contact the Public Justice Center each year over disputes with their respective landlords regarding the return of a security deposit. Public Justice Center recognizes that a landlord’s upfront security deposit requirement is a significant barrier for tenants seeking to leave unhealthy or unsustainable housing, and we want to thank the sponsor of the legislation for seeking to address this significant issue that limits mobility and fair housing choice.

**We are concerned that SB 1167 promotes the use of a complex financial product without adequate tenant/consumer protections; there are alternative ways to address the housing choice barrier posed by a security deposit.** SB 1167, which is strongly supported by the company Lease Lock, does not address many concerns that we have stated in previous years, and, in some ways, creates additional problems in this year’s version of the bill:

1. Because tenants will not be interested parties to the insurance contract between Lease Lock and the landlord, tenants would not be able to make claims to the insurer, challenge an insurer’s decision to deny a claim, or dispute an insurer’s decision to pay a claim until after the tenant is subject to collection actions – affecting their credit score and ability to re-rent at other properties.
2. This year’s bill adds the language “ (3) AN AGREEMENT TO PAY A FEE IN LIEU OF A SECURITY DEPOSIT IS NOT A DEFENSE IN AN ACTION BROUGHT BY A LANDLORD UNDER § 8-401 OF THIS TITLE FOR A TENANT’S FAILURE TO PAY RENT.” This is confusing and could lead to tenants losing their right to contest whether payment of the fee in lieu is appropriate or collectable in rent court as “rent.”

3. Nothing limits landlords to charging tenants only the cost of the Lease Lock product. Thus, landlords may turn these “fees in lieu” into another profit center by charging an administrative fee in addition to the actual cost of the insurance to the landlord. We have seen a proliferation of so-called “junk fees” such as “trash fees” and “transaction fees” that have become a profit center for landlords rather than a reflection of actual costs or payment for additional, optional services. The bill should limit landlords to only charging tenants the actual cost of the insurance coverage.
4. The bill would encourage landlords to charge the maximum security deposit allowed by law – 2 months’ rent – in order to force tenants into buying the Lease Lock product. In the 2022 bill, if the landlord offer the fee-in-lieu product, they were only allowed to charge only one month’s rent for the security deposit if the tenant chose a traditional security deposit. This year’s version removes that cap. We are very concerned that if there is no cap, landlords will charge the maximum security deposit of 2 months’ rent in order to coerce tenants to purchase the fee-in-lieu product which is a better deal for landlords than a traditional security deposit. The Governor’s housing bill may address this issue, but the bill should still be amended to address the issue as well.
5. If a tenant no longer wants to pay the fee, then the tenant has to pay the full deposit without any credit for the prior fees paid.
6. The language is unclear on whether the fee-in-lieu payments may be designated as “rent” by the landlord and collected under threat of eviction in rent court. There should be clear language in the bill indicating that the fee in lieu is not “rent.” Given the complexity of when the tenant may owe or not owe this fee in various scenarios including when the tenant opts out of paying the fee, when the landlord stops paying for the insurance, and whether the fee represents the actual amount paid by the landlord for the insurance – no renting family should ever face eviction and potential homelessness for a dispute over whether this fee is owed and in what amount through a summary ejection process. **The bill needs to explicitly state that no landlord may deem this fee as “rent” that may be collected in a summary ejection case.**
7. Finally, we are generally concerned that we do not yet understand the full implications of this financial product and how it will affect renters in the marketplace. We suggest further study on this matter including whether this will lead to an increase in third-party debt collection. In other words, Lease Lock may be more likely than a landlord to sell off purported tenant debts to a third-party debt collector, making it more difficult for tenants to later dispute the validity of the purported debt.



Other ways of addressing the housing choice barrier posed by security deposits include requiring landlords to allow tenants to pay the security deposit in installments over the course of the tenancy, e.g., allowing the tenant to pay the security deposit in three installments over the course of 6 months. This policy would promote housing mobility and housing choice without the use of complex financial products that have not been adequately studied.

Public Justice Center asks that the Committee **issue an UNFAVORABLE report SB 1167**. If you have any questions, please contact: Matt Hill, [hillm@publicjustice.org](mailto:hillm@publicjustice.org), 410-625-9409, ext. 229.