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By: **Delegates Brown and La Vay**

Introduced and read first time: February 19, 2001

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Landlord and Tenant - Tenant Holding Over and Breach of Lease - Remedies**

3 FOR the purpose of altering the amount of damages a landlord may collect for the  
4 period of holdover; requiring certain courts to issue a summons and require the  
5 tenant or person in possession to appear before the court within a certain period  
6 of time after the filing of the complaint; requiring certain warrants to be issued  
7 within a certain time after a request is filed; requiring the sheriff or constable to  
8 execute a warrant within a certain time; authorizing a landlord to file a  
9 complaint with the District Court when a certain lease provides that the  
10 landlord may repossess the premises prior to the expiration of the lease under  
11 certain circumstances; altering the requirements relating to a tenant's notice of  
12 termination of a tenancy; and generally relating to landlord tenant laws relating  
13 to a tenant holding over and breach of lease.

14 BY repealing and reenacting, with amendments,  
15 Article - Real Property  
16 Section 8-402 and 8-402.1  
17 Annotated Code of Maryland  
18 (1996 Replacement Volume and 2000 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Real Property**

22 8-402.

23 (a) (1) A tenant under any lease or someone holding under the tenant, who  
24 shall unlawfully hold over beyond the termination of the lease, shall be liable to the  
25 landlord for the actual damages caused by the holding over.

26 (2) The damages awarded to a landlord against the tenant or someone  
27 holding under the tenant, may not be less than the apportioned rent for the period of  
28 holdover [at the rate under the lease].

1                   (3)     (i)     Any action to recover damages under this section may be  
2 brought by suit separate from the eviction or removal proceeding or in the same  
3 action and in any court having jurisdiction over the amount in issue.

4                   (ii)     The court may also give judgment in favor of the landlord for  
5 the damages determined to be due together with costs of the suit if the court finds  
6 that the residential tenant was personally served with a summons, or, in the case of a  
7 nonresidential tenancy, there was such service of process or submission to the  
8 jurisdiction of the court as would support a judgment in contract or tort.

9                   (iii)    A nonresidential tenant who was not personally served with a  
10 summons shall not be subject to personal jurisdiction of the court if that tenant  
11 asserts that the appearance is for the purpose of defending an in rem action prior to  
12 the time that evidence is taken by the court.

13                  (4)     Nothing contained herein is intended to limit any other remedies  
14 which a landlord may have against a holdover tenant under the lease or under  
15 applicable law.

16     (b)     (1)     (i)     Where any interest in property shall be leased for any definite  
17 term or at will, and the landlord shall desire to repossess the property after the  
18 expiration of the term for which it was leased and shall give notice in writing one  
19 month before the expiration of the term or determination of the will to the tenant or  
20 to the person actually in possession of the property to remove from the property at the  
21 end of the term, and if the tenant or person in actual possession shall refuse to  
22 comply, the landlord may make complaint in writing to the District Court of the  
23 county where the property is located.

24                   (ii)     1.     The court shall issue a summons directed to any constable  
25 or sheriff of the county entitled to serve process, ordering the constable or sheriff to  
26 notify the tenant, assignee, or subtenant to appear on a day stated in the summons  
27 before the court WITHIN 14 DAYS AFTER THE FILING OF THE COMPLAINT to show  
28 cause why restitution should not be made to the landlord.

29                                 2.     The constable or sheriff shall serve the summons on the  
30 tenant, assignee, or subtenant on the property, or on the known or authorized agent of  
31 the tenant, assignee, or subtenant.

32                                 3.     If, for any reason those persons cannot be found, the  
33 constable or sheriff shall affix an attested copy of the summons conspicuously on the  
34 property.

35                                 4.     After notice to the tenant, assignee, or subtenant by  
36 first-class mail, the affixing of the summons on the property shall be conclusively  
37 presumed to be a sufficient service to support restitution.

38                   (iii)    Upon the failure of either of the parties to appear before the  
39 court on the day stated in the summons, the court may continue the case to a day not  
40 less than six nor more than ten days after the day first stated and notify the parties  
41 of the continuance.

1                   (2)     (i)     If upon hearing the parties, or in case the tenant or person in  
2 possession shall neglect to appear after the summons and continuance the court shall  
3 find that the landlord had been in possession of the leased property, that the said  
4 lease or estate is fully ended and expired, that due notice to quit as aforesaid had been  
5 given to the tenant or person in possession and that the tenant or person in  
6 possession had refused so to do, the court shall thereupon give judgment for the  
7 restitution of the possession of said premises and shall [forthwith] WITHIN 4 DAYS OF  
8 THE ENTRY OF THE JUDGMENT FOR POSSESSION, issue its warrant to the sheriff or a  
9 constable in the respective counties commanding the tenant or person in possession  
10 [forthwith] to deliver to the landlord possession thereof in as full and ample manner  
11 as the landlord was possessed of the same at the time when the leasing was made,  
12 and shall give judgment for costs against the tenant or person in possession so  
13 holding over. THE SHERIFF OR A CONSTABLE SHALL EXECUTE THE WARRANT WITHIN  
14 10 DAYS AFTER THE COURT HAS ISSUED THE WARRANT.

15                   (ii)     Either party shall have the right to appeal therefrom to the  
16 circuit court for the county within [ten] 4 days from the judgment.

17                   (iii)    If the tenant appeals and files with the District Court an  
18 affidavit that the appeal is not taken for delay, and also a good and sufficient bond  
19 with one or more securities conditioned that the tenant will prosecute the appeal with  
20 effect and well and truly pay all rent in arrears and all costs in the case before the  
21 District Court and in the appellate court and all loss or damage which the landlord  
22 may suffer by reason of the tenant's holding over, including the value of the premises  
23 during the time the tenant shall so hold over, then the tenant or person in possession  
24 of said premises may retain possession thereof until the determination of said appeal.

25                   (iv)     The appellate court shall, upon application of either party, set a  
26 day for the hearing of the appeal, not less than five nor more than 15 days after the  
27 application, and notice for the order for a hearing shall be served on the opposite  
28 party or that party's counsel at least 5 days before the hearing.

29                   (v)     If the judgment of the District Court shall be in favor of the  
30 landlord, a warrant shall be issued by the appellate court to the sheriff, who shall  
31 proceed forthwith to execute the warrant.

32                   (3)     (i)     The provisions of this subsection shall apply to all cases of  
33 tenancies from year to year, tenancies of the month and by the week. In case of  
34 tenancies from year to year (including tobacco farm tenancies), notice in writing shall  
35 be given three months before the expiration of the current year of the tenancy, except  
36 that in case of all other farm tenancies, the notice shall be given six months before the  
37 expiration of the current year of the tenancy; and in monthly or weekly tenancies, a  
38 notice in writing of one month or one week, as the case may be, shall be so given.

39                   (ii)     This paragraph (3), so far as it relates to notices, does not apply  
40 in Baltimore City.

1 (iii) In Montgomery County, except in the case of single family  
2 dwellings, the notice by the landlord shall be two months in the case of residential  
3 tenancies with a term of at least month to month but less than from year to year.

4 (4) When the tenant shall give notice [by parol] to the landlord or to the  
5 landlord's agent or representatives, [at least one month before the expiration of the  
6 lease or tenancy in all cases except in cases of tenancies from year to year, and at  
7 least three months' notice in all cases of tenancy from year to year (except in all cases  
8 of farm tenancy, the notice shall be six months), of the intention of the tenant to  
9 remove at the end of that year and to surrender possession of the property at that  
10 time,] WHICH IS ACCEPTED BY THE LANDLORD OR THE LANDLORD'S AGENT, THE  
11 TENANCY SHALL TERMINATE ON THE DATE SPECIFIED IN THE NOTICE and the  
12 landlord, the landlord's agent, or representative shall prove the notice from the  
13 tenant by competent testimony, it shall not be necessary for the landlord, the  
14 landlord's agent or representative to provide a written notice to the tenant, but the  
15 proof of such notice from the tenant as aforesaid shall entitle the landlord to recover  
16 possession of the property hereunder. This paragraph shall not apply in Baltimore  
17 City.

18 (5) Acceptance of any payment after notice but before eviction shall not  
19 operate as a waiver of any notice to quit, notice of intent to vacate or any judgment for  
20 possession unless the parties specifically otherwise agree in writing. Any payment  
21 accepted shall be first applied to the rent or the equivalent of rent apportioned to the  
22 date that the landlord actually recovers possession of the premises, then to court  
23 costs, including court awarded damages and legal fees and then to any loss of rent  
24 caused by the holdover. Any payment which is accepted in excess of the foregoing  
25 shall not bear interest but will be returned to the tenant in the same manner as  
26 security deposits as defined under § 8-203 of this title but shall not be subject to the  
27 penalties of that section.

28 (c) Unless stated otherwise in the written lease and initialed by the tenant,  
29 when a landlord consents to a holdover tenant remaining on the premises, the  
30 holdover tenant becomes a periodic week-to-week tenant if the tenant was a  
31 week-to-week tenant before the tenant's holding over, and a periodic  
32 month-to-month tenant in all other cases.

33 8-402.1.

34 (a) (1) (i) When [a] AN UNEXPIRED lease FOR A STATED TERM provides  
35 that the landlord may repossess the premises PRIOR TO THE EXPIRATION OF THE  
36 STATED TERM if the tenant breaches the lease, and the landlord has given the tenant  
37 1 month's written notice that the tenant is in violation of the lease and the landlord  
38 desires to repossess the premises, and if the tenant or person in actual possession  
39 refuses to comply, the landlord may make complaint in writing to the District Court of  
40 the county where the premises is located.

41 (ii) The [court] DISTRICT COURT shall summons immediately the  
42 tenant or person in possession to appear before the [court] DISTRICT COURT on a day  
43 stated in the summons WITHIN 14 DAYS AFTER THE FILING OF THE COMPLAINT to

1 show cause, if any, why restitution of the possession of the leased premises should not  
2 be made to the landlord.

3           (2)     (i)     If, for any reason, the tenant or person in actual possession  
4 cannot be found, the constable or sheriff shall affix an attested copy of the summons  
5 conspicuously on the property.

6                   (ii)     After notice is sent to the tenant or person in possession by  
7 first-class mail, the affixing of the summons on the property shall be conclusively  
8 presumed to be a sufficient service to support restitution.

9           (3)     If either of the parties fails to appear before the court on the day  
10 stated in the summons, the court may continue the case for not less than six nor more  
11 than 10 days and notify the parties of the continuance.

12     (b)     (1)     If the [court ] DISTRICT COURT determines that the tenant breached  
13 the terms of the lease and that the breach was substantial and warrants an eviction,  
14 the [court] DISTRICT COURT shall give judgment for the restitution of the possession  
15 of the premises and issue its warrant to the sheriff or a constable WITHIN 4 DAYS  
16 FROM THE DATE A REQUEST IS FILED FOR A WARRANT OF RESTITUTION,  
17 commanding the tenant to deliver possession to the landlord in as full and ample  
18 manner as the landlord was possessed of the same at the time when the lease was  
19 entered into. THE SHERIFF OR A CONSTABLE SHALL EXECUTE THE WARRANT WITHIN  
20 10 DAYS AFTER THE DISTRICT COURT HAS ISSUED THE WARRANT. The [court]  
21 DISTRICT COURT shall give judgment for costs against the tenant or person in  
22 possession.

23           (2)     Either party may appeal to the circuit court for the county, within  
24 [ten] 4 days from entry of the judgment. If the tenant (i) files with the District Court  
25 an affidavit that the appeal is not taken for delay; (ii) files sufficient bond with one or  
26 more securities conditioned upon diligent prosecution of the appeal; (iii) pays all rent  
27 in arrears, all court costs in the case; and (iv) pays all losses or damages which the  
28 landlord may suffer by reason of the tenant's holding over, the tenant or person in  
29 possession of the premises may retain possession until the determination of the  
30 appeal. Upon application of either party, the court shall set a day for the hearing of  
31 the appeal not less than five nor more than 15 days after the application, and notice  
32 of the order for a hearing shall be served on the other party or that party's counsel at  
33 least five days before the hearing. If the judgment of the District Court is in favor of  
34 the landlord, a warrant shall be issued by the court which hears the appeal to the  
35 sheriff, who shall execute the warrant.

36     (c)     (1)     Acceptance of any payment after notice but before eviction shall not  
37 operate as a waiver of any notice of breach of lease or any judgment for possession  
38 unless the parties specifically otherwise agree in writing.

39           (2)     Any payment accepted shall be first applied to the rent or the  
40 equivalent of rent apportioned to the date that the landlord actually recovers  
41 possession of the premises, then to court costs, including court awarded damages and  
42 legal fees and then to any loss of rent caused by the breach of lease.

1                   (3)       Any payment which is accepted in excess of the rent referred to in  
2 paragraph (2) of this subsection shall not bear interest but will be returned to the  
3 tenant in the same manner as security deposits as defined under § 8-203 of this title  
4 but shall not be subject to the penalties of that section.

5       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2001.