
By: **Senators Stone, Garagiola, Giannetti, and Haines**

Introduced and read first time: February 23, 2006

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Residential Leases - Surety Bonds in Lieu of Security**
3 **Deposits**

4 FOR the purpose of authorizing a tenant to purchase a surety bond in lieu of paying
5 all or part of a security deposit to a landlord for the purpose of providing certain
6 protection to the landlord; establishing that a landlord may not require a tenant
7 to purchase a surety bond and a landlord is not required to consent to a tenant
8 purchasing a surety bond; providing that a tenant shall receive a refund of a
9 premium or other charges paid in connection with purchasing a surety bond
10 under certain circumstances; providing that the amount of a surety bond, or the
11 aggregate amount of a surety bond and a security deposit, may not exceed a
12 certain amount of money; establishing that a tenant may recover certain
13 penalties plus certain attorney's fees from a landlord under certain
14 circumstances; requiring a surety to advise a tenant in writing of the tenant's
15 rights and responsibilities before the tenant purchases a surety bond; providing
16 that a tenant who purchases a surety bond has certain rights, including
17 inspection of the dwelling unit; establishing the claims for which a surety bond
18 may be paid; providing that a surety bond does not represent certain liquidated
19 damages; requiring a landlord to send a certain notice to a tenant before making
20 a claim against the surety bond; allowing a tenant to pay damages directly to a
21 landlord or require the landlord to use any security deposit before the landlord
22 makes a claim against the tenant's surety bond; providing that a tenant retains
23 certain rights and defenses in a proceeding brought by a surety; establishing
24 certain procedures for a landlord to follow before making a claim against a
25 surety; establishing that on transfer of the premises, the new landlord may not
26 require a certain additional security deposit or surety bond in excess of a certain
27 amount from a tenant; providing that a landlord or a surety forfeits certain
28 rights for failure to comply with this Act; providing that a surety, in an action
29 against a tenant, may be subject to certain damages and certain attorney's fees
30 for asserting a claim without reasonable basis; providing that only admitted
31 carriers licensed by the Maryland Insurance Administration may issue certain
32 surety bonds; and generally relating to a tenant's right to purchase a surety
33 bond in lieu of paying all or part of a security deposit.

34 BY repealing and reenacting, with amendments,

1 Article - Real Property
2 Section 8-203
3 Annotated Code of Maryland
4 (2003 Replacement Volume and 2005 Supplement)

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

7 **Article - Real Property**

8 8-203.

9 (a) (1) In this section the following words have the meanings indicated.

10 (2) "Landlord" means a landlord or a prospective landlord.

11 (3) "Security deposit" means any payment of money, including payment
12 of the last month's rent in advance of the time it is due, given to a landlord by a tenant
13 in order to protect the landlord against nonpayment of rent, damage due to breach of
14 lease, or damage to the leased premises, common areas, major appliances, and
15 furnishings.

16 (4) "Tenant" means a tenant or a prospective tenant.

17 (b) (1) A landlord may not impose a security deposit in excess of the
18 equivalent of two months' rent per dwelling unit, regardless of the number of tenants.

19 (2) If a landlord charges more than the equivalent of two months' rent
20 per dwelling unit as a security deposit, the tenant may recover up to threefold the
21 extra amount charged, plus reasonable attorney's fees.

22 (3) An action under this section may be brought at any time during the
23 tenancy or within two years after its termination.

24 (c) The landlord shall give the tenant a receipt for the security deposit as
25 specified in § 8-203.1 of this subtitle. The receipt may be included in a written lease.

26 (d) (1) (i) The landlord shall maintain all security deposits in federally
27 insured financial institutions, as defined in § 1-101 of the Financial Institutions
28 Article, which do business in the State.

29 (ii) Security deposit accounts shall be maintained in branches of
30 the financial institutions which are located within the State and the accounts shall be
31 devoted exclusively to security deposits and bear interest.

32 (iii) A security deposit shall be deposited in an account within 30
33 days after the landlord receives it.

34 (iv) The aggregate amount of the accounts shall be sufficient in
35 amount to equal all security deposits for which the landlord is liable.

1 (2) (i) In lieu of the accounts described in paragraph (1) of this
2 subsection, the landlord may hold the security deposits in insured certificates of
3 deposit at branches of federally insured financial institutions, as defined in § 1-101 of
4 the Financial Institutions Article, located in the State or in securities issued by the
5 federal government or the State of Maryland.

6 (ii) In the aggregate certificates of deposit or securities shall be
7 sufficient in amount to equal all security deposits for which the landlord is liable.

8 (3) (i) In the event of sale or transfer of the landlord's interest in the
9 leased premises, including receivership or bankruptcy, the landlord or the landlord's
10 estate, but not the managing agent or court appointed receiver, shall remain liable to
11 the tenant and the transferee for maintenance of the security deposit as required by
12 law, and the withholding and return of the security deposit plus interest as required
13 by law, as to all or any portion of the security deposit that the landlord fails to deliver
14 to the transferee together with an accounting showing the amount and date of the
15 original deposit, the records of the interest rates applicable to the security deposit, if
16 any, and the name and last known address of the tenant from whom, or on whose
17 behalf, the deposit was received.

18 (ii) A security deposit under this section may not be attached by
19 creditors of the landlord or of the tenant.

20 (4) Any successor in interest is liable to the tenant for failure to return
21 the security deposit, together with interest, as provided in this section.

22 (e) (1) Within 45 days after the end of the tenancy, the landlord shall return
23 the security deposit to the tenant together with simple interest which has accrued in
24 the amount of 3 percent per annum, less any damages rightfully withheld.

25 (2) Interest shall accrue at six-month intervals from the day the tenant
26 gives the landlord the security deposit. Interest is not compounded.

27 (3) Interest shall be payable only on security deposits of \$50 or more.

28 (4) If the landlord, without a reasonable basis, fails to return any part of
29 the security deposit, plus accrued interest, within 45 days after the termination of the
30 tenancy, the tenant has an action of up to threefold of the withheld amount, plus
31 reasonable attorney's fees.

32 (f) (1) (i) The security deposit, or any portion thereof, may be withheld
33 for unpaid rent, damage due to breach of lease or for damage by the tenant or the
34 tenant's family, agents, employees, guests or invitees in excess of ordinary wear and
35 tear to the leased premises, common areas, major appliances, and furnishings owned
36 by the landlord.

37 (ii) The tenant has the right to be present when the landlord or the
38 landlord's agent inspects the premises in order to determine if any damage was done
39 to the premises, if the tenant notifies the landlord by certified mail of the tenant's
40 intention to move, the date of moving, and the tenant's new address.

1 (iii) The notice to be furnished by the tenant to the landlord shall be
2 mailed at least 15 days prior to the date of moving.

3 (iv) Upon receipt of the notice, the landlord shall notify the tenant
4 by certified mail of the time and date when the premises are to be inspected.

5 (v) The date of inspection shall occur within five days before or five
6 days after the date of moving as designated in the tenant's notice.

7 (vi) The tenant shall be advised of the tenant's rights under this
8 subsection in writing at the time of the tenant's payment of the security deposit.

9 (vii) Failure by the landlord to comply with this requirement forfeits
10 the right of the landlord to withhold any part of the security deposit for damages.

11 (2) The security deposit is not liquidated damages and may not be
12 forfeited to the landlord for breach of the rental agreement, except in the amount that
13 the landlord is actually damaged by the breach.

14 (3) In calculating damages for lost future rents any amount of rents
15 received by the landlord for the premises during the remainder if any, of the tenant's
16 term, shall reduce the damages by a like amount.

17 (g) (1) If any portion of the security deposit is withheld, the landlord shall
18 present by first-class mail directed to the last known address of the tenant, within 45
19 days after the termination of the tenancy, a written list of the damages claimed under
20 subsection (f)(1) of this section together with a statement of the cost actually incurred.

21 (2) If the landlord fails to comply with this requirement, the landlord
22 forfeits the right to withhold any part of the security deposit for damages.

23 (h) (1) The provisions of subsections (e)(1) and (4) and (g)(1) and (2) of this
24 section are inapplicable to a tenant who has been evicted or ejected for breach of a
25 condition or covenant of a lease prior to the termination of the tenancy or who has
26 abandoned the premises prior to the termination of the tenancy.

27 (2) (i) A tenant specified in paragraph (1) of this subsection may
28 demand return of the security deposit by giving written notice by first-class mail to
29 the landlord within 45 days of being evicted or ejected or of abandoning the premises.

30 (ii) The notice shall specify the tenant's new address.

31 (iii) The landlord, within 45 days of receipt of such notice, shall
32 present, by first-class mail to the tenant, a written list of the damages claimed under
33 subsection (f)(1) of this section together with a statement of the costs actually
34 incurred and shall return to the tenant the security deposit together with simple
35 interest which has accrued in the amount of 3 percent per annum, less any damages
36 rightfully withheld.

1 (3) (i) If a landlord fails to send the list of damages required by
2 paragraph (2) of this subsection, the right to withhold any part of the security deposit
3 for damages is forfeited.

4 (ii) If a landlord fails to return the security deposit as required by
5 paragraph (2) of this subsection, the tenant has an action of up to threefold of the
6 withheld amount, plus reasonable attorney's fees.

7 (4) Except to the extent specified, this subsection may not be interpreted
8 to alter the landlord's duties under subsections (e) and (g) of this section.

9 (I) (1) UNDER THIS SUBSECTION, A LANDLORD:

10 (I) MAY NOT REQUIRE THE TENANT TO PURCHASE A SURETY
11 BOND; AND

12 (II) IS NOT REQUIRED TO CONSENT TO THE TENANT'S PURCHASE
13 OF A SURETY BOND.

14 (2) (I) INSTEAD OF PAYING ALL OR PART OF A SECURITY DEPOSIT TO
15 A LANDLORD UNDER THIS SECTION, A TENANT MAY PURCHASE A SURETY BOND TO
16 PROTECT THE LANDLORD AGAINST:

17 1. NONPAYMENT OF RENT;

18 2. DAMAGE DUE TO BREACH OF LEASE; OR

19 3. DAMAGE TO THE LEASED PREMISES, COMMON AREAS,
20 MAJOR APPLIANCES, OR FURNISHINGS OWNED BY THE LANDLORD.

21 (II) A SURETY SHALL REFUND TO A TENANT ANY PREMIUM OR
22 OTHER CHARGE PAID BY THE TENANT IN CONNECTION WITH A SURETY BOND IF,
23 AFTER THE TENANT PURCHASES A SURETY BOND, THE LANDLORD REFUSES TO
24 ACCEPT THE SURETY BOND.

25 (3) (I) THE AMOUNT OF A SURETY BOND PURCHASED INSTEAD OF A
26 SECURITY DEPOSIT MAY NOT EXCEED TWO MONTHS' RENT PER DWELLING UNIT.

27 (II) IF A TENANT PURCHASES A SURETY BOND AND PROVIDES A
28 SECURITY DEPOSIT IN ACCORDANCE WITH THIS SECTION, THE AGGREGATE AMOUNT
29 OF BOTH THE SURETY BOND AND SECURITY DEPOSIT MAY NOT EXCEED TWO
30 MONTHS' RENT PER DWELLING UNIT.

31 (III) 1. IF A LANDLORD CONSENTS TO A SURETY BOND BUT
32 REQUIRES THE SURETY BOND TO BE IN AN AMOUNT IN EXCESS OF TWO MONTHS'
33 RENT, THE TENANT MAY RECOVER UP TO THREE TIMES THE EXTRA AMOUNT
34 CHARGED FOR THE SURETY BOND, PLUS REASONABLE ATTORNEY'S FEES.

35 2. IF A LANDLORD CONSENTS TO BOTH A SURETY BOND AND
36 A SECURITY DEPOSIT BUT REQUIRES THE SURETY BOND AND THE SECURITY

1 DEPOSIT TO BE IN AN AGGREGATE AMOUNT IN EXCESS OF TWO MONTHS' RENT, THE
2 TENANT MAY RECOVER UP TO THREE TIMES THE EXTRA AMOUNT CHARGED FOR THE
3 SURETY BOND, PLUS REASONABLE ATTORNEY'S FEES.

4 (4) BEFORE A TENANT PURCHASES A SURETY BOND INSTEAD OF PAYING
5 ALL OR PART OF A SECURITY DEPOSIT, A SURETY SHALL DISCLOSE IN WRITING TO
6 THE TENANT THAT:

7 (I) PAYMENT FOR A SURETY BOND IS NONREFUNDABLE;

8 (II) EVEN AFTER A TENANT PURCHASES A SURETY BOND, THE
9 TENANT IS RESPONSIBLE FOR PAYMENT OF:

10 1. ALL UNPAID RENT;

11 2. DAMAGE DUE TO BREACH OF LEASE; AND

12 3. DAMAGE BY THE TENANT OR THE TENANT'S FAMILY,
13 AGENTS, EMPLOYEES, GUESTS, OR INVITEES IN EXCESS OF ORDINARY WEAR AND
14 TEAR TO THE LEASED PREMISES, COMMON AREAS, MAJOR APPLIANCES, OR
15 FURNISHINGS OWNED BY THE LANDLORD;

16 (III) A TENANT HAS THE RIGHT TO RECEIVE A COPY OF THE SURETY
17 BOND SIGNED BY THE SURETY AT THE TIME OF THE PURCHASE OF THE SURETY
18 BOND; AND

19 (IV) IF THE SURETY FAILS TO COMPLY WITH THE REQUIREMENTS
20 OF THIS PARAGRAPH, THE SURETY FORFEITS THE RIGHT TO MAKE ANY CLAIM
21 AGAINST THE TENANT UNDER THE SURETY BOND.

22 (5) (I) A TENANT WHO PURCHASES A SURETY BOND IN ACCORDANCE
23 WITH THIS SUBSECTION HAS THE RIGHT TO HAVE THE DWELLING UNIT INSPECTED
24 BY THE LANDLORD IN THE TENANT'S PRESENCE FOR THE PURPOSE OF MAKING A
25 WRITTEN LIST OF THE DAMAGES THAT EXIST AT THE COMMENCEMENT OF THE
26 TENANCY, IF THE TENANT REQUESTS AN INSPECTION BY CERTIFIED MAIL WITHIN 15
27 DAYS OF THE TENANT'S OCCUPANCY.

28 (II) A TENANT WHO PROVIDES A SURETY BOND UNDER THIS
29 SUBSECTION SHALL HAVE ALL THE RIGHTS PROVIDED UNDER SUBSECTION (F)(1)(II)
30 THROUGH (V) OF THIS SECTION.

31 (III) A TENANT HAS THE RIGHT TO RECEIVE A COPY OF THE SURETY
32 BOND SIGNED BY THE SURETY AT THE TIME OF THE TENANT'S PURCHASE OF THE
33 SURETY BOND.

34 (IV) A TENANT SHALL BE ADVISED IN WRITING OF THE TENANT'S
35 RIGHTS UNDER THIS PARAGRAPH PRIOR TO THE PURCHASE OF A SURETY BOND.

36 (6) (I) A SURETY BOND MAY BE USED TO PAY CLAIMS BY A LANDLORD
37 FOR:

- 1 1. UNPAID RENT;
- 2 2. DAMAGE DUE TO BREACH OF LEASE; OR
- 3 3. DAMAGE BY THE TENANT OR THE TENANT'S FAMILY,
- 4 AGENTS, EMPLOYEES, GUESTS, OR INVITEES IN EXCESS OF ORDINARY WEAR AND
- 5 TEAR TO THE LEASED PREMISES, COMMON AREAS, MAJOR APPLIANCES, OR
- 6 FURNISHINGS OWNED BY THE LANDLORD.

7 (II) A SURETY BOND DOES NOT REPRESENT LIQUIDATED DAMAGES
8 AND MAY NOT BE USED AS PAYMENT TO A LANDLORD FOR BREACH OF THE RENTAL
9 AGREEMENT, EXCEPT IN THE AMOUNT THAT THE LANDLORD IS ACTUALLY
10 DAMAGED BY THE BREACH.

11 (III) EXCEPT AS PROVIDED IN SUBPARAGRAPHS (I) AND (II) OF THIS
12 PARAGRAPH, A SURETY MAY NOT MAKE ANY OTHER PAYMENT TO A LANDLORD.

13 (7) AT LEAST 10 DAYS BEFORE A LANDLORD MAKES A CLAIM AGAINST A
14 SURETY BOND SUBJECT TO THIS SUBSECTION, THE LANDLORD SHALL SEND TO THE
15 TENANT BY FIRST-CLASS MAIL DIRECTED TO THE LAST KNOWN ADDRESS OF THE
16 TENANT, A WRITTEN LIST OF THE DAMAGES TO BE CLAIMED AND A STATEMENT OF
17 THE COSTS ACTUALLY INCURRED BY THE LANDLORD.

18 (8) (I) A TENANT SHALL RETAIN THE OPTION TO PAY ANY DAMAGES
19 DIRECTLY TO THE LANDLORD OR REQUIRE THE LANDLORD TO USE THE TENANT'S
20 SECURITY DEPOSIT, IF ANY, BEFORE THE LANDLORD MAKES A CLAIM AGAINST THE
21 SURETY BOND.

22 (II) IF A TENANT PAYS ANY DAMAGES DIRECTLY TO THE LANDLORD
23 OR REQUIRES THE LANDLORD TO USE THE TENANT'S SECURITY DEPOSIT UNDER
24 SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE PAYMENT FULLY SATISFIES THE
25 CLAIM, THE LANDLORD SHALL FORFEIT THE RIGHT TO MAKE A CLAIM UNDER THE
26 SURETY BOND.

27 (9) IN ANY PROCEEDING BROUGHT BY THE SURETY AGAINST THE
28 TENANT ON A SURETY BOND UNDER THIS SUBSECTION:

29 (I) THE TENANT SHALL RETAIN ALL RIGHTS AND DEFENSES
30 OTHERWISE AVAILABLE IN A PROCEEDING BETWEEN A TENANT AND A LANDLORD
31 UNDER THIS SECTION; AND

32 (II) DAMAGES MAY ONLY BE AWARDED TO THE SURETY TO THE
33 EXTENT THAT THE TENANT WOULD HAVE BEEN LIABLE TO THE LANDLORD UNDER
34 THIS SECTION.

35 (10) (I) IF A LANDLORD'S INTEREST IN THE LEASED PREMISES IS SOLD
36 OR TRANSFERRED, THE NEW LANDLORD MAY NOT REQUIRE:

37 1. DURING THE CURRENT LEASE TERM, AN ADDITIONAL
38 SECURITY DEPOSIT FROM THE TENANT; OR

1 2. AT ANY LEASE RENEWAL, A SURETY BOND AND A
2 SECURITY DEPOSIT FROM THE TENANT THAT, IN THE AGGREGATE AMOUNT, IS IN
3 EXCESS OF TWO MONTHS' RENT PER DWELLING UNIT.

4 (II) IF THE AGGREGATE AMOUNT DESCRIBED IN SUBPARAGRAPH
5 (I)2 OF THIS PARAGRAPH IS IN EXCESS OF TWO MONTHS' RENT, THE TENANT MAY
6 RECOVER UP TO THREE TIMES THE EXTRA AMOUNT CHARGED, PLUS REASONABLE
7 ATTORNEY'S FEES.

8 (11) (I) IF A LANDLORD FAILS TO COMPLY WITH THE REQUIREMENTS
9 OF THIS SUBSECTION, THE LANDLORD FORFEITS THE RIGHT TO MAKE ANY CLAIM
10 AGAINST THE SURETY BOND.

11 (II) IF A SURETY FAILS TO COMPLY WITH THE REQUIREMENTS OF
12 THIS SUBSECTION, THE SURETY FORFEITS THE RIGHT TO MAKE ANY CLAIM AGAINST
13 A TENANT UNDER THE SURETY BOND.

14 (12) IF A SURETY, IN AN ACTION AGAINST THE TENANT, ASSERTS A CLAIM
15 UNDER THE SURETY BOND WITHOUT HAVING A REASONABLE BASIS TO ASSERT THE
16 CLAIM, THE COURT MAY GRANT THE TENANT DAMAGES OF UP TO THREE TIMES THE
17 AMOUNT CLAIMED PLUS REASONABLE ATTORNEY'S FEES.

18 (13) A SURETY BOND ISSUED UNDER THIS SUBSECTION MAY ONLY BE
19 ISSUED BY AN ADMITTED CARRIER LICENSED BY THE MARYLAND INSURANCE
20 ADMINISTRATION.

21 [(i)] (J) No provision of this section may be waived in any lease.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 2006.