



MARYLAND LEGAL AID

Advancing
Human Rights and
Justice for All

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The Honorable Senator William C. Smith, Jr.
Chair of the Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, Maryland 21401

RE: Testimony Opposing Senate Bill 892- Real Property Article – Section 8-203(j)

Dear Chairman Smith and Members of the Committee:

Thank you for your invitation to present testimony concerning **SB 892**. Maryland Legal Aid (MLA) is a non-profit law firm that provides free legal services to Maryland's low-income and vulnerable residents. MLA handles civil legal cases involving a wide range of issues, including family law, housing, public benefits, consumer law (e.g., bankruptcy and debt collection), and criminal record expungements. As part of that work, Maryland Legal Aid represents thousands of indigent Maryland citizens in their role as tenants. Maryland Legal Aid opposes **SB 892** as currently drafted and asks that this committee give it an unfavorable report.

SB 892 would significantly diminish the rights of Maryland tenants under Real Property Article §8-203. Section 8-203 regulates the financial security a landlord may require of a tenant when entering into a residential lease. Section 8-203 currently permits Maryland landlords to use two forms of financial security in that context, a security deposit or a security bond. **SB 892** would permit a third form of financial security – a “fee in lieu of a security deposit.” However, as amended by **SB 892**, Section 8-203 would not provide Maryland tenants the same protections in connection with the proposed new form of security that it provides concerning the two currently approved forms.

SB 892 responds to a relatively new insurance product by which landlords can insure against breaches of lease rather than obtaining protection through a security deposit or security bond.¹ The insurance product, offered by Leaselock, Inc. and perhaps others, involves the tenant paying a monthly fee – the “fee in lieu of a security deposit” – that is used by the landlord to pay the premium on the insurance the landlord purchases from Leaselock. According to Leaselock, a \$29 monthly fee paid by the tenant covers the premium for the landlord to purchase

¹ <https://dot.la/leaselock-2650284205.html>

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\$5,000 of coverage against failure to pay rent and \$500 of coverage against physical damage.² The insurance purchased by the landlord and paid for by the tenant's "fee in lieu of a security deposit" is thus an alternative to a security deposit or a security bond.

It is important to note that when an insurer pays a claim to its insured the insurer then acquires the right to sue the party that caused the loss. As a consequence, if Leaselock, for example, paid a landlord \$5,000 on a claim for past due rent or \$500 on a claim for damage to the premises, it would own a claim against the tenant to recover that sum. Thus, the tenant could owe both the "fee in lieu of a security deposit" and, in addition, the full amount of the claim the insurer paid the landlord. In short, the tenant could owe both the premium on the insurance that protects the landlord and the amount of the claim payment the landlord receives from that insurance.

Nothing in **SB 892** requires the landlord to notify the tenant of how the "fee in lieu of a security deposit" will be used and how paying the fee will affect the tenant's rights. By contrast, in recognition that few tenants understand how financial products work, §8-203 currently requires in connection with a security bond that the tenant be advised in writing that:

- (i) Payment for a surety bond is nonrefundable;
- (ii) The surety bond is not insurance for the tenant;
- (iii) The surety bond is being purchased to protect the landlord against loss due to nonpayment of rent, breach of lease, or damages caused by the tenant;
- (iv) The tenant may be required to reimburse the surety for amounts the surety paid to the landlord;
- (v) Even after a tenant purchases a surety bond, the tenant is responsible for payment of:
 - 1. All unpaid rent;
 - 2. Damage due to breach of lease; and
 - 3. 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, or furnishings owned by the landlord;

Section 8-203(i)(4)(i) to (v).

In sum, §8-203 requires that tenants must be advised in writing that paying the premium on a security bond is a non-refundable payment that will not reduce their liability for any breach of lease. This disclosure is necessary to avoid the tenant's likely misperception that paying the bond premium will protect the tenant against liability for a breach of the lease. It does not, and §8-203 assures that the tenant is advised of that fact in writing. Under the statute, the failure to

² <https://leaselock.com/zero-deposit/>

provide the tenant with the required written disclosures forfeits the bonding company's right to make a claim against the tenant to recover a payment made under the bond.

Similarly, the tenant's payment of a "fee in lieu of a security deposit" would do nothing to reduce the tenant's liability for a breach of lease, and tenants will be misled if they are not advised of that fact in writing. As with a security bond, failure to provide the tenant with that important information in writing should forfeit the insurer's right to make a claim against the tenant to recover a payment it makes to the insured landlord.

Section 8-203 provides tenants other rights in connection with a security bond that tenants should also receive concerning the insurance for which the "fee in lieu of a security deposit." For example, in connection with a security bond the tenant has the right under §8-203 to:

- 1) Inspect the premises for the purpose of making a list of existing damage before the beginning of the tenancy; §8-203(i)(5)(i)
- 2) Receive notice in writing of the damage for which the landlord will make a claim and to dispute the claim; §8-203(i)(7)-(9)
- 3) Retain all rights and defenses against the bonding company that it has against the landlord; §8-203(i)(10).

This list of a tenant's rights in connection with a security bond is not exhaustive, but it demonstrates the importance of protecting the essentially powerless tenant when the landlord extracts financial security from the tenant at the outset of the lease. **SB 892** fails to provide the tenant with any of these necessary protections in connection with the "fee in lieu of a security deposit."

Thank you for providing MLA the opportunity to comment on this important piece of legislation. MLA respectfully requests that you give **SB 892** as currently drafted an unfavorable report.

/s/Lee H. Ogburn
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