LeaseLock - SB 892 - Favorable - Chris Grimm.pdf
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Testimony of Christopher Grimm Regarding SB 892, on Behalf of LeaseLock
Maryland Senate Judicial Proceedings Committee
March 2, 2021

Chairman Smith and members of the Judicial Proceedings Committee, on behalf of LeaseLock, thank you for allowing me to submit testimony supporting Senate Bill 892, legislation to help renters overcome a significant barrier to housing. And thank you to Senator Augustine for introducing this important legislation.

Anyone who has rented a home knows that security deposits can be a significant burden, particularly for first-time renters and people without significant savings. Security deposits typically equal one- or two-months' rent. When the average rent in Maryland is about $1,700, the security deposit is a lot of money – especially when it sits unused in a property owner's bank account. With first and last month's rent, the average move-in cost is $5,000. A 2018 report by the New York City Comptroller found what many renters and would-be renters already know: security deposits represent a significant barrier to housing access.

LeaseLock has simple goals: to help renters move into apartments without paying costly security deposits, to help property owners eliminate costly administration of deposits, and for both – eliminate 99 percent of arguments about apartment damages when leases end.

For a modest monthly premium, LeaseLock insures property owners for up to $5,000 in lost rent and $500 in damages. To be clear, LeaseLock insures property owners, not residents. But once protected by insurance, owners can then offer renters the option of paying a modest monthly "deposit waiver fee" – that averages $25 in Maryland – instead of a full security deposit that amounts to several hundred or up to a few thousand dollars. Nationwide, when given the option, 92% of renters choose to pay the waiver fee.

As a matter of fairness, please be aware that LeaseLock lease insurance is offered in the full spirit of Maryland's fair housing and anti-discrimination laws. LeaseLock underwrites an entire property or portfolio of properties. This means that when a prospective tenant is approved for occupancy in a building, that tenant will not have to go through an additional credit check, income check, citizenship check, or background check. Additionally, lease insurance pricing is the same for every similarly situated unit within a property or portfolio, regardless of whether the tenants are a family of 2 or 8 people. And finally, if the deposit waiver fee option is offered to one tenant in a building, it is offered to every prospective tenant. LeaseLock's goal, and landlords' goals, are to help 100% of tenants avoid the struggle to pay security deposits.

While LeaseLock insures more than 40 rental properties in Maryland, we believe more properties will offer zero-deposit rentals if there is clarity in the law. Senate Bill 892 provides that clarity while ensuring that when landlords offer a zero-deposit rental, it will always be the renter's choice to pay a waiver fee or a full security deposit.

Senate Bill 892 is a win-win for renters and property owners, and we respectfully request a favorable report from the committee.

Public Justice Ctr testimony SB892 Oppose.pdf
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SB 892: Real Property – Residential Leases – Fee in Lieu of Security Deposit

Hearing before the Judicial Proceedings Committee on March 2, 2021

Position: UNFAVORABLE

Public Justice Center (PJC) is a non-profit advocacy organization and civil legal services provider that provides advice and representation to over 700 tenants throughout 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 sponsors of the legislation for seeking to address this significant issue that limits mobility and fair housing choice.

Unfortunately, the bill as drafted would authorize an alternative scheme to security deposits without the guardrails and benefits to tenants that currently exist in Real Prop. § 8-203 for security deposits. In our understanding, SB 892 would authorize the practice of having tenants pay an additional monthly fee to the landlord that is likely understood by tenants as a form of "security deposit insurance." The landlord then pays that fee or perhaps some other monthly fee to a deposit alternative company. After the tenant vacates the property, if the landlord claims that the tenant still owes additional rent or has damaged the property, the landlord files a claim with the deposit alternative company. The company pays out the claim to the landlord and then may pursue the tenant for debt collection of the claim amount. If the tenant does not pay, the company has the legal authority to report negative information to the credit bureaus and file a judicial action for collection.

The problems with this model are not addressed by SB 892:

- **Tenants, in effect, lose much of their ability to contest the landlord's claim for damages.** First, tenants often do not agree with the landlord's claim for damages, and there is no effective means for tenants to challenge that claim with the deposit alternative company process. In our experience, landlords regularly charge tenants after move out with a

$200 "cleaning fee" (which is not damage beyond ordinary wear and tear) or for rent or excessive fees that the tenant does not owe. Oftentimes, tenants move to escape uninhabitable conditions. Landlords may subsequently sue for unpaid rent, and tenants may defend and /or counterclaim for uninhabitable conditions of disrepair or retaliation. However, under the practice authorized by SB 892, the deposit alternative company is suing the tenant, and the tenant is unable to counterclaim or have access to the documents or information in the judicial process that only the landlord has.

- **Potential to mislead: Tenant is not purchasing insurance.** These deposit alternative products appear to be marketed as a type of "insurance." Yet, unlike any other type of insurance, the tenant here is not the insured. They pay the insurance premium through the landlord, but they are not covered in the event of a claim by the landlord. Instead, the tenant appears to be paying the monthly fee and may still be subsequently sued by the deposit alternative company instead of the landlord if the landlord makes a claim. The landlord has every incentive to make such claim since they will no longer be the party responsible for collecting on the claim or handling a dispute over the claim.

- **Lack of Disclosure.** The proposed legislation does not require the security deposit company to provide their contact information to the tenant and does not require the company to inform the tenant that if they miss a monthly payment then they may be required to pay a full security deposit. The proposed legislation does not require the deposit alternative company to notify the tenant if and when a landlord files a claim against the insurance and the outcome of that claim. We understand that the proponents of the legislation are willing to discuss this last concern further, and we appreciate that flexibility.

- **Lack of Regulation.** There is no requirement that the fee paid by the tenant mirrors the fee paid by the landlord to the deposit alternative company. This practice should not become a profit center for landlords. Also, we understand that there may be an amendment offered such that the deposit alternative companies would no longer be subject to regulation as an admitted carrier licensed the Maryland Insurance Administration. We would oppose such an amendment as well.

We recognize the intention of the bill sponsors: Tenants need more flexibility with respect to security deposits to enable mobility. For this reason, we support any proposal that requires or encourages landlords to accept payment of the security deposit in installments. Such programs reduce the barrier for tenants who need to move while maintaining the protections put in place by the General Assembly for security deposits (required interest rate; provisions for return; clear remedy for failure to return, etc.) under Real Prop. § 8-203.

Please issue an UNFAVORABLE report on SB 892. If you have any questions, please contact Matt Hill, hillm@publicjustice.org, 410-625-9409, ext. 229.

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

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Advancing Human Rights and Justice for All

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02.2021

February 26, 2021

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

$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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February 26, 2021

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

From: Kira Wilpone-Welborn
Consumer Protection Division

Re: Senate Bill 892 – Real Property – Residential Leases – Fee in Lieu of Security Deposit (OPPOSE)

The Consumer Protection Division ("Division") of the Office of the Attorney General **opposes** Senate Bill 892 sponsored by Senators Augustine, Waldstreicher, and Jackson. Senate Bill 892 purports to add a provision to Maryland's Security Deposit law, Md. Code Ann., Real Prop. §8-203, that would provide consumers a reasonable alternative to paying a security deposit or obtaining a surety bond at the time they enter a residential lease with a landlord. Under Senate Bill 892, landlords and tenants can agree to a "a fee in lieu of a security deposit." The landlord could, but would not be obligated, to use the fee to purchase insurance from an admitted carrier licensed by the Maryland Insurance Administration. As a result, a landlord could charge a fee in "any amount" payable "at any interval" that is "partially or wholly nonrefundable." The Division is concerned that Senate Bill 892 could make it easier for landlords to engage in unfair, abusive, or deceptive practices by either misleading or failing to advise prospective tenants of the consequences of choosing to pay a "fee in lieu of security deposit." Though Senate Bill 892 would expose tenants to abusive practices by landlords, it fails to provide any meaningful benefit to tenants.

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 devoted exclusively to security deposits that bear interest. Md. Code Ann., Real Prop. §8-203(d). At the conclusion of a tenancy, a consumer has the right to be present when the landlord inspects the premises to determine whether any damage was done by the tenant. Md. Code Ann., Real Prop. §8-203(f). A landlord may only withhold a security deposit for unpaid rent, damages due to breach of lease, or for damages 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). A landlord must return the security deposit plus the accrued interest minus any authorized deductions with a written list of any damages claimed. Md. Code Ann., Real Prop., §8-203(e) and (g). 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). Importantly, the tenant rather than the landlord purchases the bond and must be advised in writing of all the tenant's rights and obligations prior to the purchase of the security bond. Md. Code Ann., Real Prop., §8-203(i)(5). Before making a claim to 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; a tenant has the right to pay any damages directly and has the right to dispute a landlord's claim. Md. Code Ann., Real Prop. §8-203(i)(7), (8), and (9).

Senate Bill 892 Would Harm Consumers

Senate Bill 892 does not include any of the protections afforded by the provisions related to security deposits and surety bonds. The proposed “fee in lieu of security deposit” may appear to benefit and open housing opportunities for low-income households but, in fact, Senate Bill 892 would likely harm consumers.

First, Senate Bill 892 could result in higher out-of-pocket costs paid by consumers over their lease term. Unlike the provisions related to the payment of a security deposit or use of a surety bond, Senate Bill 892 does not cap the total amount a landlord would be permitted to charge as a “fee in lieu of security deposit” and the total fees paid over the course of a multiple year lease could easily exceed the equivalent of two months' rent. Unlike a security deposit, which must be returned to a tenant with interest minus any authorized damages within 45 days of the end of a tenancy, Senate Bill 892 permits a landlord to deem a "fee in lieu of security deposit" wholly nonrefundable. Senate Bill 892 also does not require a landlord to use the fees collected to actually purchase

insurance. Likewise, Senate Bill 892 does not require a landlord who has purchased insurance to disclose to consumers the landlord's actual costs to obtain the insurance. Thus, Senate Bill 892 would permit landlords to charge tenants fees that exceed their costs to obtain insurance.

Moreover, Senate Bill 892 does not require either the insurer or a landlord to disclose to consumers, who are not parties to the insurance contract, the terms of the insurance policy and the consumers' ability to enforce the policy or obligations under the policy. As a result, consumers are left without the information necessary to evaluate the insurance product. For example, at the termination of a tenancy, Senate Bill 892 does not preclude a landlord from filing a lawsuit against a tenant for any alleged damages in addition to making an insurance claim. Further, because the consumer is not a party to the insurance contract, consumers would not be able to make claims or challenge an insurer's decision to pay or deny a landlord's claim. Likewise, if an insurer sought subrogation against a tenant for a claim paid to a landlord, a tenant may not have sufficient information to defend the claim. The failure of a landlord to disclose material information at the initiation of the offer to lease is an unfair, abusive, and deceptive practice.

For these reasons, the Consumer Protection Division recommends an unfavorable report form the Judicial Proceedings Committee on Senate Bill 892.

cc: The Honorable Malcolm Augustine
The Honorable Jeff Waldstreicher
The Honorable Michael A. Jackson
Members, Judicial Proceedings Committee