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March 30, 2021

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

FROM: The Office of the Attorney General

RE: (Crossover) House Bill 31 – Courts – Surcharges and Payment to Rental
Assistance Programs (**Support with Amendments**)

House Bill 31 increases the ceiling for general court civil case surcharges from \$55 to \$85 per case; and increases the ceiling for district court summary ejectment surcharges per case from \$8 to \$68. The bill permits landlords to pass along the filing surcharge to tenants after the third time they seek and obtain a judgment within a year. Finally, the bill establishes a Rental Assistance Special Fund. We support HB 31 with amendments.

First, we support the bill's increase in general civil filing surcharges in Section 7-202 of the Courts and Judicial Proceedings Article from \$55 to \$85, to provide more funding for the Maryland Legal Services Corporation. However, we believe the increase in summary ejectment proceeding surcharges under Section 7-301 should be considerably greater and should not establish a ceiling. Our view is reflected in the Attorney General's proposal in HB 729/SB 530¹ to increase the surcharge fee floor in all landlord-tenant actions to at least \$120. We agree with experts at Princeton's Eviction Lab that HB 31's cap on the summary ejectment surcharge "prevents adjustment of the filing fee in the future."² Instead, we urge the Committee to adopt a surcharge floor of \$120 that the Judiciary can increase in its discretion.

¹ See generally 2021 Leg., 422d. Sess. (Md. 2021).

² E-mail from Lillian Leung, Princeton Graduate Student Researcher, and Peter Hepburn, Ph.D., Statistician and Quantitative Analyst, to Hannibal Kemerer, Chief Counsel of Md. Off. of Att'y Gen. Legis. Affairs Unit (Mar. 17, 2021, 01:53 PM EDT) (on file with author).

Second, House Bill 31 allows landlords to pass on fees and surcharges to impoverished tenants.³ The Office of Attorney General, Renters United Maryland, the Public Justice Center, and other advocates are strongly opposed to transferring responsibility for the increased eviction filing surcharge to impoverished tenants. Moreover, experts at Eviction Lab note, “serial eviction filings [] increase[] housing burden . . . for tenants who are not ultimately displaced.”⁴ These tenants facing an eviction action are the most vulnerable to becoming homeless and should under no circumstances be subjected to an increased fee that must then be paid by the tenant to avoid eviction.

Lastly, we would urge adjustment of the bill’s funding allocation formula. For each filing, the bill provides \$30 in surcharge funds be allocated to a rental assistance special fund, \$30 into the right to counsel in evictions special fund, and \$8 to the Maryland Legal Services Corporation (“MLSC”) Fund. Maryland has received, however, hundreds of millions of dollars in federal rental assistance funds through both the CARES Act of 2020 and the American Rescue Act of 2021.⁵ Thus, we urge the Committee to shift HB 31’s allocation of the \$30 per filing from rental assistance to the right-to-counsel fund anticipated by SB 154.

For purposes of underscoring the importance of the underlying policy reflected in HB 31, as amended by our proposed amendments, we attach the Attorney General’s testimony in support of his filing fee bill (SB 530).

We urge the Committee to adopt the enclosed amendments and to favorably report HB 31, as amended.

Amendments:

1. Strike page 3, line 14 through page 4, line 4 and insert the following:
“(c) (1) The filing fees and costs in a civil case are those prescribed by law 12 subject to modification by law, rule, or administrative regulation. “(2) The Chief Judge of the District Court shall assess a surcharge that: (i) 1. May not be [more than: 1. \$8 per summary ejection case] **LESS THAN \$120 PER CASE FOR SUMMARY EJECTION, TENANT HOLDING OVER, OR BREACH OF LEASE THAT SEEKS A JUDGMENT FOR POSSESSION OF RESIDENTIAL PROPERTY AGAINST A RESIDENTIAL TENANT;** and 2. **MAY NOT BE MORE THAN \$18** per case for all

³ See H.B. 31 § 7–301(c)(2)(ii), 2021 Leg., 422d. Sess. (Md. read Mar. 6, 2021) (providing that surcharges assessed in summary ejection proceedings “shall be assessed against a landlord and may not be awarded or assigned by the district court as a fee or cost against a residential tenant for the *first three surcharges assessed in a year.*”) (introduced at third reading) (small caps omitted) (emphasis added).

⁴ See *supra*, note 2.

⁵ See NAT’L LOW INCOME HOUS. COAL., *Estimated Allocations for Emergency Rental Assistance from Proposed Relief Bill*, <https://nlihc.org/sites/default/files/Estimated-Coronavirus-Relief-Fund-Allocations.pdf> (last visited Mar. 24, 2021) (Maryland is estimated to receive \$402,000,000 for rental assistance from CARES Act); NAT’L LOW INCOME HOUS. COAL., *American Rescue Plan Act*, https://nlihc.org/sites/default/files/COVID-Relief-Budget_Reconciliation.pdf (last visited Mar. 24, 2021) (bill provides \$27.4 billion for rental assistance); see also H.R. 748, 116th Cong. (2020) (enacted); H.R. 1319, 117th Cong. (2021).

other civil cases; [and] (ii) IF ASSESSED UNDER ITEM (I)1 OF THIS PARAGRAPH, SHALL BE ASSESSED AGAINST A LANDLORD AND MAY NOT BE AWARDED OR ASSIGNED BY THE DISTRICT COURT AS A FEE OR COST AGAINST A RESIDENTIAL TENANT; AND (III) Shall be deposited into the Maryland Legal Services Corporation Fund established under § 11–402 of the Human Services Article. (3) (i) In addition to the surcharge assessed under paragraph (2) of this subsection, the Chief Judge of the District Court shall assess a surcharge that may not be more than \$10 per case for the following cases filed in Baltimore City: 1. Summary ejectment; 2. Tenant holding over; 3. Breach of lease; and 4. Warrant of restitution. (ii) The revenue generated from the surcharge on filing fees collected by the District Court in Baltimore City under subparagraph (i) of this paragraph shall be: 1. Remitted quarterly to the Baltimore City Director of Finance; and 2. Used to fund the enhancement of sheriff benefits and the increase in sheriff personnel to enhance the service of domestic violence orders. (4) In addition to the surcharge assessed under paragraphs (2) and (3) of this subsection, the Chief Judge of the District Court shall assess a surcharge that: (i) May not be more than: 1. \$3 per summary ejectment case; and 2. \$8 per case for all other civil cases; and (ii) Shall be deposited into the Circuit Court Real Property Records Improvement Fund established under § 13–602 of this article. (5) The Court of Appeals may provide by rule for waiver of prepayment of filing fees and other costs in cases of indigency.”

2. On page 5, strike lines 8-16 and insert the following:

“(d) A landlord may not use a lease or form of lease containing any provision that: (7) Is against public policy and void pursuant to § 8–105 of this title; [or] (8) Permits a landlord to commence an eviction proceeding or issue a notice to quit solely as retaliation against any tenant for planning, organizing, or joining a tenant organization with the purpose of negotiating collectively with the landlord; OR (9) PROVIDES THAT A TENANT IS RESPONSIBLE FOR, OR REQUIRES A TENANT TO AGREE TO BE RESPONSIBLE FOR, PAYMENT OF A FILING SURCHARGE ASSESSED AGAINST THE LANDLORD BY THE DISTRICT COURT UNDER § 7–301(C)(2)(I)1 OF THE COURTS ARTICLE.”
3. On page 6, strike lines 20 through page 7, line 33, and insert the following:

“(a) Whenever the tenant or tenants fail to pay the rent when due and payable, it shall be lawful for the landlord to have again and repossess the premises. (b) (1) Whenever any landlord shall desire to repossess any premises to which the landlord is entitled under the provisions of subsection (a) of this section, the landlord or the landlord’s duly qualified agent or attorney shall file the landlord’s written complaint under oath or affirmation, in the District Court of the county wherein the property is situated: (i) Describing in general terms the property sought to be repossessed; (ii) Setting forth the name of each tenant to whom the property is rented or any assignee or subtenant; (iii) Stating the amount of rent and any late fees due and unpaid, less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7–309 of the Public Utilities Article; (iv) Requesting to repossess the premises and, if requested by the landlord, a judgment for the amount of rent due, costs, EXCLUDING ANY SURCHARGE ASSESSED AGAINST THE LANDLORD UNDER § 7–301(C)(2)(I)1 OF THE COURTS ARTICLE, and any late

fees, less the amount of any utility bills, fees, or security deposits paid by a tenant under § 7–309 of the Public Utilities Article; (v) If applicable, stating that, to the best of the landlord’s knowledge, the tenant is deceased, intestate, and without next of kin; and (vi) If the property to be repossessed is an affected property as defined in § 6–801 of the Environment Article, stating that the landlord has registered the affected property as required under § 6–811 of the Environment Article and renewed the registration as required under § 6–812 of the Environment Article and: 1. A. If the current tenant moved into the property on or after February 24, 1996, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6–815(c) of the Environment Article; or B. On or after February 24, 2006, stating the inspection certificate number for the inspection conducted for the current tenancy as required under § 6–815(c), § 6–817(b), or § 6–819(f) of the Environment Article; or 2. Stating that the owner is unable to provide an inspection certificate number because: A. The owner has requested that the tenant allow the owner 36 access to the property to perform the work required under Title 6, Subtitle 8 of the Environmental Article; B. The owner has offered to relocate the tenant in order to allow the owner to perform work if the work will disturb the paint on the interior surfaces of the property and to pay the reasonable expenses the tenant would incur directly related to the relocation; and C. The tenant has refused to allow access to the owner or refused to vacate the property in order for the owner to perform the required work.”

cc: The Honorable Luke Clippinger, Chair, Judiciary Committee
Judicial Proceedings Committee Members

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February 26, 2021

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

FROM: Brian E. Frosh
Attorney General

RE: SB 530 – Landlord and Tenant – Eviction Actions – Filing Surcharge and Prohibited
Lease Provisions – **Support**

Chairman Smith, Vice Chair Waldstreicher, and distinguished Members of the Judicial Proceedings Committee, thank you for the opportunity to testify in support of SB 530. Like a number of other bills this Committee has considered, SB 530 is a recommendation of our COVID-19 Access to Justice Task Force.¹

This bill would increase Maryland's eviction filing fee from \$15 to the approximate national average of \$120. The increased revenues would serve as a stable funding stream for the Maryland Legal Services Corporation.

Many Maryland families were facing housing instability long before the pandemic. In 2019, more than 660,000 evictions were filed in Maryland district courts.² And as with the health outcomes of COVID-19, communities of color are facing the greatest hardships. In Baltimore City, for example, the number of eviction removals of Black households in 2018 and 2019 was three times higher than those for white households.³ The pandemic further

¹ See generally MD. ATT'Y GEN. BRIAN E. FROSH'S COVID-19 ACCESS TO JUST. TASK FORCE, CONFRONTING THE COVID-19 ACCESS TO JUSTICE CRISIS (Jan. 2021),

https://www.marylandattorneygeneral.gov/A2JC%20Documents1/AG_Covid_A2J_TF_Report.pdf.

² See Bennett Leckrone, *Chief Judge: Eviction Filings Face Court Backlog*, MD. MATTERS (Sep. 9, 2020), <https://www.marylandmatters.org/2020/09/09/chief-judge-eviction-filings-face-court-backlog/>.

³ Matt Hill et al., *Reports Show the Effectiveness of Providing A Right to Counsel to Challenge Baltimore's High Rate of Evictions and Its Disparate Racial and Gender Impact*, PUB. JUST. CTR. (May 18, 2020) <https://www.publicjustice.org/en/news/dual-reports-show-the-effectiveness-of-providing-a-right-to-counsel-to-challenge-baltimores-high-rate-of-evictions-and-its-disparate-racial-and-gender-impact/>.

exacerbated these challenges, with more than 200,000 Marylanders estimated to face evictions once court proceedings resume and state and federal moratoria and defenses are lifted.⁴

The landlord's cost of filing is \$15, one of the lowest nationwide.⁵ Some states impose fees over \$300. These low filing fees cause landlords to engage in a practice called "serial eviction filings."⁶ Over 660,000 eviction cases are filed each year in Maryland.⁷ The filing rate in some counties is over 100%, meaning more eviction actions are brought than there are homes for rent.⁸ Baltimore City has 125,000 rental units, but roughly 140,000 eviction cases per year.⁹ About 6,500 result in removal.¹⁰ Why the discrepancy, and what happens to all the other cases? 84 percent of Baltimore City eviction actions are filed with only one month's rent due.¹¹ Worse, many landlords file as soon as tenants are a few days late. This practice has made courts "more like an extension of the residential rental business than an impartial arbitrator between landlords and tenants."¹²

Maryland's low barriers for filing eviction actions make it an outlier. Eviction filing rates in neighboring states range from 5.3% in Pennsylvania¹³ to 16.9% in Delaware.¹⁴ Rates in

⁴ See Angela Roberts, *Longtime Baltimore neighborhood leader among thousands of Marylanders facing eviction amid the pandemic*, BALT. SUN (Dec. 23, 2020), <https://www.baltimoresun.com/coronavirus/bs-md-eviction-coronavirus-20201218-7vdh0m3ipfgyjece7e24adifay-story.html>.

⁵ Brian Frosh, *Attorney General: Maryland Eviction Process 'Unfair to Tenants' | Commentary*, BALT. SUN (Dec. 11, 2020), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1213-frosh-serial-evictions-20201211-nnu6zmiqjgc7dyohhvqx5k3cu-story.html>.

⁶ See generally Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, SOCIAL FORCES, Sep. 11, 2020, at 1, <https://academic.oup.com/sf/advance-article-pdf/doi/10.1093/sf/soaa089/33732959/soaa089.pdf> ("Serial eviction filings occur when a property manager files to evict the same household repeatedly from the same address.").

⁷ See Leckrone, *supra* note 2.

⁸ Md. Eviction Filing Rate Interactive Map, Eviction Lab, <https://evictionlab.org/map/#/2016?geography=counties&bounds=-84.401,36.16,-71.463,41.132&type=efr&locations=24,-77.222,39.273> (last visited Feb. 15, 2021).

⁹ STOUT RISIUS ROSS, *THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN BALTIMORE CITY 19* (May 18, 2020), https://bmorerentersunited.org/wp-content/uploads/2020/05/Baltimore-RTC-Report_FINAL_5.8.2020.pdf.

¹⁰ See *id.*

¹¹ *Id.*, at 23.

¹² Leung et al., *supra* note 6, at 23.

¹³ Pa. Eviction Filing Rate Interactive Map, Eviction Lab, <https://evictionlab.org/map/#/2016?geography=states&bounds=-81.727,39.553,-73.482,42.43&type=efr&locations=42,-77.799,40.874> (last visited Feb. 15, 2021).

¹⁴ Del. Eviction Filing Rate Interactive Map, Eviction Lab, <https://evictionlab.org/map/#/2016?geography=states&bounds=-90.784,35.387,-66.895,43.876&type=efr&locations=10,-75.42,38.821> (last visited Feb. 15, 2021).

New Jersey¹⁵, the District of Columbia¹⁶, and Virginia¹⁷ range from 12.5% to 15.7%.
Maryland's rate in excess of 80% dwarfs them all.¹⁸

Forced displacement disrupts lives in profound and irrevocable ways. Its harms fall disproportionately on those least able to weather them.¹⁹ As one writer captures the impact of eviction, “without stable shelter, everything else falls apart.”²⁰ We must do more to help Maryland families keep things together.

For all the foregoing reasons, I urge the Committee to favorably report Senate Bill 530.

cc: Members of the Judicial Proceedings Committee

¹⁵ N.J. Eviction Filing Rate Interactive Map, Eviction Lab, <https://evictionlab.org/map/#/2016?geography=states&bounds=-90.784,35.387,-66.895,43.876&type=efr&locations=10,-75.42,38.821%2B34,-74.728,39.776> (last visited Feb. 15, 2021).

¹⁶ D.C. Eviction Filing Rate Interactive Map, Eviction Lab, <https://evictionlab.org/map/#/2016?geography=states&bounds=-78.346,38.465,-75.776,39.389&type=efr&locations=11,-77.016,38.905> (last visited Feb. 15, 2021).

¹⁷ Va. Eviction Filing Rate Interactive Map, Eviction Lab, <https://evictionlab.org/map/#/2016?geography=counties&bounds=-79.053,38.235,-74.946,39.711&type=efr&locations=51,-77.893,38.582> (last visited Feb. 15, 2021).

¹⁸ Compare Md. Eviction Filing Rate Interactive Map, *supra* note 12 (finding Maryland's eviction filing rate exceeds 100%) with Pa. Eviction Filing Rate Interactive Map, *supra* note 17 (finding Pennsylvania's eviction filing rate is 5.3%), Del. Eviction Filing Rate Interactive Map, *supra* note 18 (finding Delaware's eviction filing rate is 16.9%), N.J. Eviction Filing Rate Interactive Map, *supra* note 19 (finding New Jersey's eviction filing rate is 12.05%), D.C. Eviction Filing Rate Interactive Map, *supra* note 20 (finding District of Columbia's eviction filing rate is 15.67%), and Va. Eviction Filing Rate Interactive Map, *supra* note 20 (finding Virginia's eviction filing rate is 14.48%).

¹⁹ See HUNTER URB. POL'Y & PLAN., NEXT IN LINE: THE HUMAN COST OF THE EVICTION CRISIS 19 (2020), http://www.hunterurban.org/wp-content/uploads/2020/10/Studio-Spring-2020_Next-In-Line_The-Human-Cost-of-the-Eviction-Crisis.pdf.

²⁰ Interview, *Eviction: Not Just a Condition, but a Cause of Poverty*, U.S. CATH. (Feb. 13, 2018), <https://uscatholic.org/articles/201802/eviction-not-just-a-condition-but-a-cause-of-poverty/>.