

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 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 month’s rent per dwelling unit. Md. Code Ann., Real Prop. §8-203(i). Importantly, it is the tenant who purchases the bond rather than the landlord and the tenant 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 against 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 681 Would Harm Consumers

Senate Bill 681 does not include many of the protections afforded by the provisions in the Real Property Article related to security deposits and surety bonds. While the proposed “fee in lieu of security deposit” may appear to benefit and open housing opportunities for low-income households, in fact, Senate Bill 681 would likely harm consumers in several ways.

First, Senate Bill 681 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 purchase of a surety bond, Senate Bill 681 does not cap the total amount a landlord would be permitted to charge as a “fee in lieu of security deposit.” Thus, the total fees paid over the course of a multiple year lease could easily exceed the equivalent of two months’ rent. Additionally, 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 681 permits a landlord to deem a “fee in lieu of security deposit” wholly nonrefundable.

Second, Senate Bill 681 does not require a landlord who has purchased insurance to disclose to consumers the landlord’s actual costs to obtain the insurance or require that the fee charged to consumers be the actual cost of the insurance. Further, the bill does not require a landlord to first apply the portion of the fee charged which is over and above the costs to obtain the insurance towards any claimed losses as a result of nonpayment of rent, damage due to breach of lease, or damage to the leased premises before making a claim on the insurance. As a result, Senate Bill 681 would permit landlords to charge tenants fees that exceed their costs to obtain insurance and unfairly profit from a tenant’s election to pay the “fee in lieu of security deposit” instead of the lump-sum security deposit.

Third, because consumers would not be parties to the insurance contract, consumers would not be able to make claims or appropriately challenge an insurer's decision to pay or deny a landlord's claim. Moreover, if an insurer sought subrogation against a tenant for a claim paid to a landlord or transfers a paid claim to a third-party as permitted in Senate Bill 681, a tenant may not have sufficient information to defend the claim or understand a demand for payment of the claim. As a result, the tenant would pay both a monthly fee and the claim at the conclusion of a tenancy, and the "fee in lieu of security deposit" would ultimately provide no material benefit to the consumer.

As such, a "fee in lieu of security deposit" is not a reasonable alternative to a security deposit that is limited in amount, is refundable, and provides consumers protections under section 8-203 of the Real Property Article. Likewise, a "fee in lieu of security deposit" is not a reasonable alternative to a surety bond which allows a consumer to avoid an upfront security deposit payment by paying a small monthly fee, and provides consumers protections as a party to the insurance contract and the financial cap protections under section 8-203 of the Real Property Article.

For these reasons, the Division urges an unfavorable report on Senate Bill 681.

cc: The Honorable Joanne C. Benson
Members, Judicial Proceedings Committee