



**MARYLAND  
LEGAL AID**

*Advancing  
Human Rights and  
Justice for All*

**SB0603 - Real Property - Residential Leases - Fee in Lieu of Security Deposit**

Hearing before the Senate Judicial Proceedings Committee,  
March 7, 2023, 1:00PM

**Position: UNFAVORABLE**

*Maryland Legal Aid (MLA) submits its written and oral testimony on SB0603 at the request of Senator Anthony Muse.*

MLA is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents. Our 12 offices serve residents in each of Maryland's 24 jurisdictions and handle a range of civil legal matters, including people struggling with housing insecurity and possible eviction.

MLA urges the Committee's unfavorable report on SB0603. This bill would create a quagmire of anti-consumer abuses under the guise of helping tenants access housing opportunities.

SB0603 purportedly eliminates the large, up-front cost of security deposits, which can equal as much as two months' rent. However, this is misleading because the bill does not establish an installment payment alternative to lump-sum security deposits nor the tenant protections that exist in the security deposit provisions of the Maryland Real Property. Without them, this is an elimination in name only.

Instead, SB0603 would allow lease provisions whereby the tenant pays monthly fees to their landlord, who in turn must apply that fee to the cost of "insurance" offered by companies that may not even be licensed and regulated in the state of Maryland. The bill calls this lease obligation a "fee in lieu of security deposit." It is actually an insurance fee. The policy holder is the landlord. The beneficiary of the policy is *also* the landlord. The payor for the policy, however, is the tenant.

The blatant unfairness in SB0603 is most demonstrable in its provision that allows landlords to evict tenants as they are paying these insurance fees. For example, while a tenant is paying for the landlord's insurance to cover unpaid rent, the landlord can sue to evict the tenant for non-payment of rent. The tenant will still be subject to the insurer's lawsuit for recovery of that rent, as well.

Commented [A1]: We might have to define fin-tech or not use the term.

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Similarly, although the tenant is paying for insurance that covers damage caused by a sewage back-up, the landlord may file a breach-of-lease action against the tenant for allegedly causing the back-up. The tenant may be evicted and then face a collections action by the insurer for the costs of that damage. While Maryland Legal Aid represents thousands of low-income renters per year, we do not have the resources to help the vast majority of those who would be caught in this legal quicksand, and landlords and insurance companies know it. The resulting increase in homelessness and additional public outlays would hurt everyone, not just the renters.

Other patently inequitable provisions abound in SB0603, such as:

1. This bill allows this insurance fee to exceed the cost of a security deposit. Whereas Maryland law currently caps security deposit costs at the value of two months' rent, a tenant may be obligated under this bill to pay a cumulative amount of fees for "the cost of obtaining insurance or other expenses arising out of effectuating insurance coverage for a unit" (page 3, lines 15-17). Literally, the total amount of the insurance fee could be as high as the landlord and the insurer decide upon. The tenant is not privy to that negotiation.
2. If the landlord accepts the monthly insurance fees and deceptively misallocates those fees, for instance by not purchasing or maintaining the insurance policy, the only penalty under SB0603 is that the landlord must apply the value of those misallocated fees to the tenant's move-out expenses (page 6, lines 3-9). Furthermore, for any violation of this new law, SB0603 limits the tenant's recovery in court to "damages not more than three times the monthly rent... and reasonable attorney's fees." Thus, if either the insurer or the landlord engages in deceptive trade practices in violation of this new law, our state consumer protections appear to be excluded. In other words, the bill allows deceptive trade practices so long as the tenant gets a coupon on their way out.
3. For instances in which the insurer goes after the tenant to collect a claim on behalf of the landlord, SB0603 allows the insurer to disclose less supporting information about the claim than the existing law requires for withholdings from security deposits and surety bonds. In the 2022 session, the General Assembly passed the Tenant Protection Act, which raised the standard for these withholdings by requiring more than mere itemization of costs for alleged property damage. The Tenant Protection Act requires "supporting documentation that identifies the materials or services provided." SB0603 does not require this additional documentation.

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4. SB0603 allows these claims against tenants for the insurer's recovery of any "unpaid sums due under a lease" (page 3, lines 12-14). In contrast, the existing security deposit law countenances protection only "against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishings." Real Prop. § 8-203(a)(3). "Sums due under a lease" is an expansive category broad enough to allow insurer's claims for fees that were not bargained for in the lease and fees that violate state law.

Overall, SB0603 will open a new sphere of litigation between tenants and companies that are not parties to rental agreements. In these lawsuits, insurers will reap the benefit of latent defects while landlords reap the benefit of not even having to show up in court to be confronted by the tenants. Tenants will largely be unrepresented and lacking supporting evidence to fight against insurance claims brought up to 1 year after they have vacated. They will not be sufficiently educated enough to seek joinder of the landlord and to counterclaim based on substandard conditions that existed concurrently with the damages alleged by the insurer. These lawsuits will not be covered by "Access to Counsel in Evictions."

The proponents of this bill will profit from confusion among high-need consumers in a low-supply housing market who will be offered leases with a new insurance product in a take-it-or-leave-it manner. For these reasons, Maryland Legal Aid strongly urges the Committee's unfavorable **report on SB0603**. If you have any questions, please contact:

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