

MMHA - 2023 - SB 603 - fee in lieu of security dep

Uploaded by: Aaron Greenfield

Position: FAV



Bill Title: Senate Bill 603, Real Property – Residential Leases – Fee in Lieu of Security Deposit

Committee: Judicial Proceedings

Date: March 7, 2022

Position: Favorable

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose membership consists of owners and managers of more than 207,246 rental housing homes in more than 937 apartment communities. Our members house over 667,000 residents of the State of Maryland throughout the entire State of Maryland. MMHA membership also includes more than 216 associate members that supply goods and services to the multi-housing industry. More information is available at <https://www.mmhaonline.org/>

Senate Bill 603 authorizes housing providers to offer residents a fee in lieu of a security deposit. The housing provider is required to disclose in writing the fee amount and security deposit, the frequency of payment, whether the fee is non-refundable, and that the resident is still responsible for paying to repair damages and their rent. A resident may opt out of the fee in lieu of a security deposit upon providing a housing provider with the security deposit. The fee, which may not be altered during the lease term, must be used to purchase insurance to cover unpaid damages or lost rent. Should a resident opt to pay the fee, the housing provider must still comply with all notice and inspection requirements per the security deposit law, including providing the resident documentation of any damages and receipts for damages repaired. If a housing provider cancels a fee in lieu of a security deposit, a housing provider faces penalties under the bill. A violation of this provision could result in damages equal to as much as three months' rent.

In Maryland, security deposits are one way to protect a housing provider from defaults on rent and unpaid damage at the end of a lease term. However, MMHA recognizes that a security deposit can come at a high upfront cost to residents.

Maryland is one of only four states that does not permit housing providers to offer residents the option of a small monthly non-refundable fee instead of a security deposit. A recent poll of 400 Maryland voters who rent found: 69% would welcome the fee option and 45% would take advantage of the fee option with the understanding that it is not refundable and that they are responsible for unrepaired damages at the end of the lease.

When residents pay a monthly fee in lieu of a security deposit, a housing provider will purchase insurance instead of collecting a security deposit against damages and lost rent. The housing provider is insured, and residents can save significant expenses prior to and including on move-in day.



For these reasons, we respectfully request a favorable report on Senate Bill 603.

Aaron J. Greenfield, MMHA Director of Government Affairs, 410.446.1992

SB603 - Chris Grimm - LeaseLock - Favorable.pdf

Uploaded by: Chris Grimm

Position: FAV



SB 603 - Real Property - Residential Leases – Fee in Lieu of Security Deposit - Favorable

Waiving Security Deposits: A Renter’s most significant housing barrier is the advance payment of the first and last month's rent plus a security deposit. A “deposit waiver fee” offers tenants an option to pay a small monthly “fee” (avg \$29) instead of a large upfront security deposit (avg \$1,700). This option is a win-win for landlords and tenants. Landlords are still protected against a tenant’s failure to pay for damages or rent by purchasing insurance, and tenants can waive the significant upfront cost of a security deposit. The deposit waiver fee works much like Primary Mortgage Insurance, which allows home buyers to waive another significant housing barrier, the 20% down payment.

Unfortunately, Maryland is one of only four states that does not permit landlords to offer tenants the option of a small monthly non-refundable fee instead of a security deposit. A recent poll of 400 Maryland voters who rent found:

- 69% would welcome the fee option.
- 45% would take advantage of the fee option with the understanding that it is not refundable and that they are responsible for unrepaired damages at the end of the lease.

Legislative Proposal:

SB 603 would permit landlords to offer tenants a fee in lieu of a security deposit and introduce several common-sense protections for tenants.

- Permits a landlord to offer tenants the option of paying a non-refundable fee.
- The landlord shall disclose in writing the fee amount and security deposit required, the frequency of payment, whether the fee is non-refundable, and that the tenant is still responsible for paying to repair damages and their rent.
- A tenant may opt out of the fee in lieu of a security deposit upon providing a landlord with the security deposit.
- A landlord must use the fee to purchase insurance to cover unpaid damages or lost rent.
- The fee is capped to what it costs the landlord to obtain and administer the insurance.
- A landlord shall not charge a tenant for normal wear and tear.
- A landlord shall not alter the fee amount during a lease term.
- The landlord must comply with all notice and inspection requirements per the security deposit law, including providing the tenant documentation of any damages and receipts for damages repaired.
- Provides for penalties if a landlord cancels a fee in lieu of a security deposit during a tenancy or fails to procure or maintain insurance.
- Restricts landlords from “double-dipping,” charging a tenant for damages an insurer covered in a claim.
- Provides for damages for violating this section to up to three months’ rent.

Testimony Real Property- Residential Leases- Fee i

Uploaded by: Senator Benson

Position: FAV

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Budget and Taxation Committee
Education, Business and
Administration Subcommittee
Pensions Subcommittee
Chair, Rules Committee

Joint Committees

Audit and Evaluation Committee
Children, Youth, and Families
Ending Homelessness
Fair Practices and
State Personnel Oversight
Joint Committee on Pensions

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony of Senator Joanne C. Benson

SB0603: Real Property - Residential Leases - Fee in Lieu of Deposit

Good afternoon Chair Smith, Vice Chair Waldstreicher and members of The Judicial Proceedings Committee. I am here to present SB0603 Real Property - Residential Leases - Fee in Lieu of Deposit.

This legislation is for the purpose of helping stabilize the economic impact that occurs with tenants when trying to move into a new property with a landlord. A security deposit is a sum of money that a new tenant gives to their landlord or property management company in addition to their advance rent payments. As we all know, security deposits can be a sizable fee which can prevent potential tenants from renting housing. Today, tenants in Maryland must pay up to two months' rent for a security deposit, in addition to the first month's rent. On average, Maryland rent is approaching \$2,000 per month, renters may need approximately \$5,000 before moving into the establishment. Marylanders need a new policy that can help them get affordable access to housing, especially those without the financial means to afford hefty security deposits due to extreme living situations or financial strains.

This bill's purpose is to allow property owners the option to offer the tenant to pay a monthly fee that would waive the security deposit. The tenant would have the option to accept that monthly fee or pay the traditional security deposit. This alternative can help reduce barriers for renters who may have difficulty obtaining the funds for a traditional security deposit. This fee is particularly beneficial for low-income renters, young adults, and individuals who have experienced financial hardship. In addition, this legislation provides many tenant protection provisions, including disclosure of the costs of the fee. The security deposit, ensures that the fee is always optional for tenants, permits a tenant to opt-out during the lease by providing a security deposit, and offers the same inspection requirements required for security deposits and includes penalties for non-compliance. Additionally, tenants will be less likely to be behind on rent payments during their time at the residence due to the significant security deposit fees in place currently that can cost up to two months rents in addition to the first month's rent that a tenant must pay. This can set tenants back a total of three months on payments if they are in a difficult financial situation. This optional security deposit alternative is permitted in 46 states but not in Maryland, providing states with relief for their citizen's. In reality most people are living paycheck to paycheck and a large security deposit is not helpful to those who are in dire situations, simply looking for a place to live.

Thus, I respectfully urge the committee to issue a favorable report for SB0603.

SB 603_Consumer Protection Division_Oppose_2023.pd

Uploaded by: Kira Wilpone-Welborn

Position: UNF

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Attorney General

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Chief of Staff

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Deputy Attorney General



WILLIAM D. GRUHN
Chief
Consumer Protection Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

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March 3, 2023

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

From: Kira Wilpone-Welborn, Assistant Attorney General
Consumer Protection Division

Re: Senate Bill 603 – Real Property - Residential Leases - Fee in Lieu of Security Deposit
(OPPOSE)

The Consumer Protection Division of the Office of the Attorney General (the "Division") **opposes** Senate Bill 603 sponsored by Senators Benson and Jackson. Senate Bill 603 purports to provide consumers a reasonable alternative to paying a security deposit or obtaining a surety bond by allowing them to pay a "fee in lieu of a security deposit," which their landlord would use to purchase insurance coverage for unpaid monies and damage to the unit. However, the "fee in lieu of a security deposit" provides few benefits to tenants and could result in some tenants paying significantly more than they would have if they had paid a security deposit. For example, Senate Bill 603 would permit the landlord to charge a fee in any amount, payable at any interval, that is wholly nonrefundable, would permit a landlord to contract with an insurance provider that is not licensed by the Maryland Insurance Commission, and would encourage insurance providers to seek subrogation (financial compensation) from tenants for claims paid to their former landlords. Thus, Senate Bill 603 would 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" and ultimately 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 that is devoted exclusively to security deposits and bears interest. Md. Code Ann., Real Prop. §8-203(d). A landlord may only withhold a security deposit for unpaid rent, damage due to breach of lease, or for damage 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) and (g)(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)(3). 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 prior to the purchase of the security bond. Md. Code Ann., Real Prop., §8-203(i)(5). Additionally, 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; and a tenant has the right to pay any damages directly to the landlord and has the right to dispute a landlord's claim. Md. Code Ann., Real Prop. §8-203(i)(7), (8), and (9).

Senate Bill 603 Would Harm Consumers

Senate Bill 603 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 603 would likely harm consumers in several ways.

First, Senate Bill 603 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 603 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 603 permits a landlord to deem a "fee in lieu of security deposit" wholly nonrefundable.

Second, Senate Bill 603 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 603 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 to the insurer, appropriately challenge an insurer's decision to deny a claim, or dispute an insurer's decision to pay a claim until after another party initiates collection activity against the tenant. 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 603, 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. Thus, the "fee in lieu of security deposit" would ultimately provide no material financial benefit to the consumer.

As such, a "fee in lieu of security deposit" is not a reasonable alternative to a security deposit, which 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 encourages an unfavorable report from the Judicial Proceedings Committee on Senate Bill 603.

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

SB 603 -- Fees in lieu of Security Deposit -- Writ

Uploaded by: Marceline White

Position: UNF



Testimony to the Senate Judicial Proceedings Committee
SB 603: Real Property – Residential Leases – Fee in Lieu of Security
Deposit
Position: Unfavorable

March 7, 2023

The Honorable Will Smith, Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401
cc: Members, Senate Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

Economic Action Maryland is a nonprofit organization that works to advance economic justice and equity statewide through direct-service, research, education, and advocacy.

We write in opposition to SB 603.

Economic Action Maryland's Tenant Advocacy Program provides information to renters and property owners about their rights and responsibilities. In 2022 we received 1,396 client intakes. A common concern is housing affordability, and security deposits can exist as a barrier to finding safe, stable, and affordable housing. But this solution may have unintended negative consequences for renters.

Under Maryland law, security deposits exist to protect landlords from specific types of damages. They can withhold deposits if they experience losses from unpaid rent, a breach of the lease, or physical damage to the property more than "normal wear and tear."¹

Security deposits also protect renters. Because deposits cover unpaid rent and damages, they can reduce claims against renters if they can't pay the rent or property damage occurs. Maryland's laws define what deposits can cover, the maximum amount that can be charged, and procedures to prevent disputes or mitigate their effects. While they aren't perfect, security deposits are regulated to provide protection while reducing opportunities for exploitation.

¹ <https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=grp§ion=8-203&enactments=false>

Fees in lieu of security deposits are not security deposits. Fees in-lieu-of security deposits insure property owners against the renters paying for them, but they don't protect renters from claims the way deposits would. Renters would be paying monthly fees that expose them to liability instead of reducing it. Renters are entitled to have their deposits returned with deductions for actual damages to the landlord, but there's no guarantee fees paid under this alternative would be returned.

The fee structures provided by SB603 threaten renters. Currently, Maryland's security deposit law caps deposits at the equivalent of two (2) months' rent. But as it stands there is no limit on the amount these proposed fees could add up to, and landlords can charge even more to "effectuate" obtaining the insurance. Thus, renters could easily end up paying more than the maximum amount allowed for security deposits, all for far less protection than deposits provide.

In our current housing crisis, finding ways to reduce burdens on renters is necessary. Security deposits can be a barrier to obtaining safe, stable, affordable housing. But we must weigh the effects of proposed alternatives. Fees in-lieu of security deposits would protect landlords, but not the renters paying for them.

Instead, these fees would open renters up to greater liability. Because the fees aren't capped and aren't necessarily refundable, they could serve to extract from renters already struggling to assemble a security deposit. This housing crisis demands solutions, but exposing lower-income households to extraction and increased liability could make the situation far worse.

Finally, we are generally concerned that we do not yet understand the full implications of this financial product and how it will affect renters in the marketplace. We suggest further study on this matter including whether this will lead to an increase in third-party debt collection. In other words, Lease Lock may be more likely than a landlord to sell off purported tenant debts to a third-party debt collector, making it more difficult for tenants to later dispute the validity of the purported debt.

Other ways of addressing the housing choice barrier posed by security deposits include requiring landlords to allow tenants to pay the security deposit in installments over the course of the tenancy, e.g., allowing the tenant to pay the security deposit in three installments over the course of 6 months. This policy would promote housing mobility and housing choice without the use of complex financial products that have not been adequately studied.

For these reasons, we respectfully urge an unfavorable report on SB 603.

Best,

Marceline White
Executive Director

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Economic Action Maryland is a 501(c)(3) nonprofit organization and your contributions are tax deductible to the extent allowed by law.

SB 603 Public Justice Center UNF.pdf

Uploaded by: Matt Hill

Position: UNF



C. Matthew Hill
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SB 603 - Real Property – Residential Leases – Fee in Lieu of Deposit

Hearing before the Judicial Proceedings Committee, March 7, 2023

Position: OPPOSE (UNFAV)

Public Justice Center (PJC) is a non-profit advocacy organization and civil legal services provider that provides advice and representation to over 800 tenants in 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 sponsor of the legislation for seeking to address this significant issue that limits mobility and fair housing choice.

We are concerned that SB 603 promotes the use of a complex financial product without adequate tenant/consumer protections; there are alternative ways to address the housing choice barrier posed by a security deposit. SB 603, which is strongly supported by the company Lease Lock, does not address many concerns that we have stated in previous years, and, in some ways, creates additional problems in this year's version of the bill:

1. The language is unclear on whether the fee-in-lieu payments may be designated as "rent" by the landlord and collected under threat of eviction in rent court (p. 3, lines 3-5). There should be clear language in the bill indicating that the fee in lieu is not "rent."
2. Nothing limits landlords to charging tenants only the cost of the Lease Lock product. Thus, landlords may turn these "fees in lieu" into another profit center by charging an administrative fee in addition to the actual cost of the insurance to the landlord (p. 5 lines 15-17).
3. The bill would encourage landlords to charge the maximum security deposit allowed by law – 2 months' rent – in order to force tenants into buying the Lease Lock product. In last year's bill, if the landlord offer the fee-in-lieu product, they were only allowed to charge only one month's rent for the security deposit if the tenant chose a traditional

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.

security deposit. This year's version removes that cap. We are very concerned that if there is no cap, landlords will charge the maximum security deposit of 2 months' rent in order to coerce tenants to purchase the fee-in-lieu product which is a better deal for landlords than a traditional security deposit.

4. If a tenant no longer wants to pay the fee, then the tenant has to pay the full deposit without any credit for the prior fees paid.
5. The fee-in-lieu arrangement offers fewer tenant protections than a security deposit or surety bond under Real Property § 8-203:
 - a. Unlike a security deposit agreement that transfers automatically to the new owner, if a new landlord takes over the property, the fee arrangement is not required to transfer to the new owner, and the new owner can require the payment of a security deposit.
 - b. If an insurer seeking to collect from a tenant upon a claim that the insurer paid to the landlord, and the insurer violates the statutory notice requirements, the bill allows the insurer to "cure" the deficiency.
 - c. To have a pre-move-in inspection under the bill, a tenant must give notice in writing by certified mail at least 15 days before she moves in. This could result in tenants being accused of damage that was not their responsibility.
6. Finally, we are generally concerned that we do not yet understand the full implications of this financial product and how it will affect renters in the marketplace. We suggest further study on this matter including whether this will lead to an increase in third-party debt collection. In other words, Lease Lock may be more likely than a landlord to sell off purported tenant debts to a third-party debt collector, making it more difficult for tenants to later dispute the validity of the purported debt.

Other ways of addressing the housing choice barrier posed by security deposits include requiring landlords to allow tenants to pay the security deposit in installments over the course of the tenancy, e.g., allowing the tenant to pay the security deposit in three installments over the course of 6 months. This policy would promote housing mobility and housing choice without the use of complex financial products that have not been adequately studied.

Public Justice Center asks that the Committee **issue an UNFAVORABLE report on SB 603**. If you have any questions, please contact: Matt Hill, hillm@publicjustice.org, 410-625-9409, ext. 229.

sb603.pdf

Uploaded by: Matthew Pipkin

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 603
Real Property – Residential Leases – Fee in Lieu of Security
Deposit
DATE: February 15, 2023
(3/7)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes Senate Bill 603, as drafted. Senate Bill 603 establishes Real Property § 8-203.2 which states that a landlord may offer a fee in lieu of a security deposit. A county or municipality may not require a landlord to offer a fee in lieu of a security deposit. An agreement to pay a fee in lieu of a security deposit is not a defense in an action brought by a landlord under RP § 8-401 for a tenant's failure to pay rent.

The Judiciary takes no position on the policy aims of the legislation but has concerns in the bill's drafting. This bill creates a burdensome statutory process to incorporate insurance policies of landlords for nonpayment by tenants, while creating the possibility of inconsistent interpretations of the statute by courts around the State. In addition, the bill provides on page six that any fee paid by a tenant shall be credited toward the security deposit. Yet, on page two, the bill indicates that a security deposit does not include a fee in lieu of a security deposit. These provisions are confusing.

Additionally, on page 8, line 27 through and including page 9, line 2, the bill references debts that are "declared void" by the Court. This is not a legal term of art with which the Judiciary is familiar and there are no provisions within the bill to determine how such a declaration is to be made.

cc. Hon. Joanne Benson
Judicial Council
Legislative Committee
Kelley O'Connor

SB603 Maryland Legal Aid

Uploaded by: Zafar Shah

Position: UNF



**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.

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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