

# HOUSE BILL No. 1148

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-31.

**Synopsis:** Enforcement of habitability standards. Allows a city, county, or town to bring a nuisance action against a tenant or other person responsible for a nuisance. Requires a landlord to repair or replace an essential item not later than 24 hours after being notified by a tenant that the tenant's rental unit is without certain essential services. Provides that a tenant may bring an enforcement action against a landlord by providing notice of the landlord's noncompliance and allows for certain remedies to a prevailing tenant. Allows a court to order that a tenant's regular rental payments are paid into an attorney trust account or to the clerk of the court during the pendency of an enforcement action brought by the tenant.

**Effective:** July 1, 2023.

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## Errington

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January 10, 2023, read first time and referred to Committee on Judiciary.

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First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

# HOUSE BILL No. 1148

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 32-31-1-22, AS AMENDED BY P.L.86-2018,
- 2 SECTION 227, IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2023]: Sec. 22. (a) The definitions in
- 4 IC 32-31-3 apply throughout this section.
- 5 (b) As used in this section, "penalty" refers to any of the following:
- 6 (1) The assessment of a penalty, fine, or fee.
- 7 (2) Actual or threatened eviction from a rental unit, or the causing
- 8 of an actual or threatened eviction from a rental unit.
- 9 (c) As used in this section, "political subdivision" has the meaning
- 10 set forth in IC 36-1-2-13.
- 11 (d) Except as provided in subsection (e), a political subdivision may
- 12 not adopt or enforce any ordinance, rule, or regulation that imposes a
- 13 penalty, or allows for the imposition of a penalty, against a tenant, an
- 14 owner, or a landlord for a contact made to request law enforcement
- 15 assistance or other emergency assistance for one (1) or more rental
- 16 units if:
- 17 (1) the contact is made by or on behalf of:



- 1 (A) a victim or potential victim of abuse;  
 2 (B) a victim or potential victim of a crime; or  
 3 (C) an individual in an emergency; and  
 4 (2) either of the following applies:  
 5 (A) At the time the contact is made, the person making the  
 6 contact reasonably believes that law enforcement assistance or  
 7 other emergency assistance is necessary to prevent the  
 8 perpetration or escalation of abuse, a crime, or an emergency.  
 9 (B) If abuse, a crime, or an emergency occurs, the law  
 10 enforcement assistance or other emergency assistance was  
 11 needed.
- 12 (e) Subject to subsections (f) and (g), this section does not prohibit  
 13 a political subdivision from adopting or enforcing an ordinance, a rule,  
 14 or a regulation that imposes a penalty for a contact that:  
 15 (1) is made to request law enforcement assistance or other  
 16 emergency assistance; and  
 17 (2) is not made by or on behalf of:  
 18 (A) a victim or potential victim of abuse;  
 19 (B) a victim or potential victim of a crime; or  
 20 (C) an individual in an emergency.
- 21 (f) If:  
 22 (1) a political subdivision imposes a penalty under an ordinance,  
 23 a rule, or a regulation authorized by subsection (e); and  
 24 (2) the prohibited contact to request law enforcement assistance  
 25 or other emergency assistance is made by a tenant in a rental unit;  
 26 the penalty imposed must be assessed against the tenant of the rental  
 27 unit and not against the landlord or owner of the rental unit.
- 28 (g) Any penalty that is assessed under an ordinance, a rule, or a  
 29 regulation authorized by subsection (e) may not exceed two hundred  
 30 fifty dollars (\$250).
- 31 (h) Nothing in this section shall be construed to prevent a housing  
 32 authority established under IC 36-7-18 from enforcing rights or  
 33 remedies established by contract or federal law against a landlord or  
 34 owner of a rental unit.
- 35 (i) Nothing in this section shall be construed to prevent:  
 36 **(1) an attorney representing a city, county, or town from bringing**  
 37 **a nuisance action described under IC 32-30-6-7(b) against a**  
 38 **landlord, or an owner of a rental unit, a tenant, or a person**  
 39 **responsible for the nuisance; or**  
 40 **(2) a prevailing city, county, or town from recovering**  
 41 **damages, fees, and costs that are permitted under**  
 42 **IC 32-30-6-7 and IC 32-30-6-8.**



1 SECTION 2. IC 32-31-8-5 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. **(a) As used in this**  
 3 **section, "essential item" means an item, or one (1) or more parts**  
 4 **or components of an item, that:**

5 **(1) is described in subsection (c)(4); and**

6 **(2) is:**

7 **(A) used for; or**

8 **(B) necessary to;**

9 **the delivery of one (1) or more essential services to a rental**  
 10 **unit.**

11 **(b) As used in this section, "essential service" means:**

12 **(1) electricity;**

13 **(2) gas;**

14 **(3) heat;**

15 **(4) water; or**

16 **(5) other service;**

17 **needed for the safe and habitable occupation by a tenant of the**  
 18 **tenant's rental unit.**

19 **(c) A landlord shall do the following:**

20 **(1) Deliver the rental premises to a tenant in compliance with the**  
 21 **rental agreement, and in a safe, clean, and habitable condition.**

22 **(2) Comply with all health and housing codes applicable to the**  
 23 **rental premises.**

24 **(3) Make all reasonable efforts to keep common areas of a rental**  
 25 **premises in a clean and proper condition.**

26 **(4) Provide and maintain the following items in a rental premises**  
 27 **in good and safe working condition, if provided on the premises**  
 28 **at the time the rental agreement is entered into:**

29 **(A) Electrical systems.**

30 **(B) Plumbing systems sufficient to accommodate a reasonable**  
 31 **supply of hot and cold running water at all times.**

32 **(C) Sanitary systems.**

33 **(D) Heating, ventilating, and air conditioning systems. A**  
 34 **heating system must be sufficient to adequately supply heat at**  
 35 **all times.**

36 **(E) Elevators, if provided.**

37 **(F) Appliances supplied as an inducement to the rental**  
 38 **agreement.**

39 **(d) Subject to subsections (e) and (f), a landlord shall repair or**  
 40 **replace an essential item not later than twenty-four (24) hours**  
 41 **after being notified by a tenant that the tenant's rental unit is**  
 42 **without one (1) or more essential services as a result of:**



- 1           (1) a malfunction in the essential item; or  
 2           (2) the landlord's failure to otherwise maintain the essential  
 3           item in good and safe working condition.  
 4           (e) The twenty-four (24) hour period set forth in subsection (d)  
 5           does not apply if:  
 6           (1) the malfunction is the direct result of the tenant's  
 7           commission of waste to the essential item or the rental unit; or  
 8           (2) the landlord makes a good faith attempt within the  
 9           twenty-four (24) hour period to undertake the needed repairs  
 10           to, or replacement of, an essential item through:  
 11           (A) the landlord's own efforts; or  
 12           (B) the services of:  
 13           (i) a contractor; or  
 14           (ii) an employee or agent of the landlord;  
 15           and the landlord or person described in clause (B) is unable to  
 16           begin or complete the needed repairs or replacement within  
 17           the twenty-four (24) hour period.  
 18           (f) Subsection (d) does not:  
 19           (1) prohibit a landlord from interrupting, shutting off, or  
 20           terminating one (1) or more essential services to a rental unit  
 21           as needed:  
 22           (A) in an emergency;  
 23           (B) to make good faith repairs; or  
 24           (C) for construction; or  
 25           (2) require a landlord to pay for one (1) or more essential  
 26           services provided to a rental unit if the landlord has not  
 27           agreed to pay for the essential services under the rental  
 28           agreement.  
 29           SECTION 3. IC 32-31-8-5.5 IS ADDED TO THE INDIANA CODE  
 30           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 31           1, 2023]: **Sec. 5.5. (a) Instead of, or prior to, bringing an action**  
 32           **under section 6 of this chapter, a tenant may enforce an obligation**  
 33           **of a landlord under this chapter by doing the following:**  
 34           **(1) Delivering to the landlord, at least thirty (30) days before**  
 35           **the tenant's next regular rental payment is due under the**  
 36           **rental agreement, a written notice that includes the following:**  
 37           **(A) A statement describing the landlord's alleged failure to**  
 38           **comply with one (1) or more requirements of this chapter.**  
 39           **(B) A good faith estimate of the cost of repairs or other**  
 40           **action necessary to remedy the conditions resulting from**  
 41           **the landlord's alleged failure to comply with one (1) or**  
 42           **more requirements of this chapter.**



1           **(C) A statement that, if the landlord fails to make the**  
 2           **repairs or take the actions identified under clause (B)**  
 3           **before the tenant's next regular rental payment is due**  
 4           **under the rental agreement, the tenant intends to:**

5               **(i) withhold from the tenant's next regular rental**  
 6               **payment the estimated cost of the repairs or other action**  
 7               **identified under clause (B); and**

8               **(ii) use the money withheld to make the repairs or take**  
 9               **the action necessary to remedy the conditions identified**  
 10              **under clause (B).**

11           **A tenant shall deliver a notice under this subdivision to the**  
 12           **person authorized to act as agent for the owner under**  
 13           **IC 32-31-3-18(a)(2) at the address required to be disclosed for**  
 14           **that person under IC 32-31-3-18(a).**

15           **(2) Subject to subsection (b), if, before the tenant's next**  
 16           **regular rental payment is due, the landlord fails or refuses to**  
 17           **make the repairs or take the action identified in the tenant's**  
 18           **notice under subdivision (1), the tenant may:**

19               **(A) withhold from the tenant's next regular rental payment**  
 20               **the estimated cost of the repairs or other action identified**  
 21               **under subdivision (1)(B); and**

22               **(B) use the money withheld to make the repairs or take the**  
 23               **action necessary to remedy the conditions identified under**  
 24               **subdivision (1)(B).**

25           **(b) A tenant:**

26               **(1) may not take any action described in subsection (a)(2) if**  
 27               **the tenant prevents the landlord from having reasonable**  
 28               **access to the rental premises to make repairs or take action**  
 29               **necessary to remedy the condition described in the tenant's**  
 30               **notice under subsection (a)(1); and**

31               **(2) shall, following the completion of repairs, refund to the**  
 32               **landlord any amount withheld under subsection (a)(2)(A) that**  
 33               **exceeds the actual costs incurred by the tenant in making the**  
 34               **repairs identified in the notice, by including the excess amount**  
 35               **in the next rental payment due under the rental agreement. If**  
 36               **no rental payments are due under the rental agreement, the**  
 37               **landlord may withhold the amount of the excess from any**  
 38               **security deposit due to the tenant under IC 32-31-3.**

39           **(c) A tenant may not withhold from rental payments, or**  
 40           **otherwise demand from the landlord, any amount incurred by the**  
 41           **tenant in making repairs or taking any action under subsection**  
 42           **(a)(2)(B) that exceeds the cost estimates for repairs set forth in the**



1 **tenant's notice under subsection (a)(1)(B).**

2 SECTION 4. IC 32-31-8-6.5 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2023]: **Sec. 6.5. (a) This section applies to an action filed under  
5 section 6 of this chapter, after June 30, 2023.**

6 **(b) During the pendency of an action, if a tenant continues to  
7 occupy the rental unit upon which the action is based, the court  
8 may issue a provisional order that the tenant make the regular  
9 rental payments due under the rental agreement to:**

- 10 (1) the clerk of the court, who shall hold the payments in a  
11 trust; or  
12 (2) an attorney trust account.

13 **The funds held under this subsection may not be disbursed without  
14 a court order.**

15 **(c) If a tenant is the prevailing party, the tenant is entitled to a  
16 refund of rental payments made under subsection (b). The court  
17 shall determine the amount of the refund by considering:**

- 18 (1) the estimated cost of repairs or other action necessary to  
19 remedy the condition that was the basis of the tenant's action;  
20 (2) expenses incurred by the tenant to remedy the condition  
21 that was the basis of the tenant's action;  
22 (3) efforts by the landlord before and after the filing of the  
23 tenant's action to remedy the condition that was the basis of  
24 the tenant's action; and  
25 (4) any other factors that justice may require.

26 **The court may reduce the amount of funds to be awarded to the  
27 tenant if the court determines that the tenant contributed to the  
28 condition of noncompliance that formed the basis of the action.**

29 **(d) If a landlord is the prevailing party:**

- 30 (1) the landlord is entitled to receive the rental payments  
31 made under subsection (b) to be credited against the amount  
32 of the regular rental payments due by the tenant under the  
33 parties' rental agreement; and  
34 (2) the court may reduce the amount of funds to be awarded  
35 to the landlord if the court determines that the landlord's  
36 failure to comply with one (1) or more requirements under  
37 this chapter contributed to the condition of noncompliance  
38 that formed the basis of the action.

39 **(e) The court shall issue an order directing the disbursement of  
40 funds under either subsection (c) or (d).**

