

# SENATE BILL 681

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CF 2lr2622

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By: **Senator Benson**

Introduced and read first time: February 4, 2022

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Residential Leases – Fee in Lieu of Deposit**

3 FOR the purpose of authorizing a landlord to offer the payment of a fee in lieu of a security  
4 deposit in a residential lease subject to certain requirements; requiring a landlord to  
5 purchase certain insurance coverage using a fee in lieu of a security deposit;  
6 establishing certain procedural requirements for a landlord and an insurer relating  
7 to certain insurance claims; authorizing a tenant to dispute certain claims by a  
8 landlord and providing that claims by a landlord or insurer are void under certain  
9 circumstances; providing that a tenant is entitled to certain damages and attorney's  
10 fees under certain circumstances; and generally relating to fees in lieu of security  
11 deposits for residential leases.

12 BY repealing and reenacting, without amendments,  
13 Article – Real Property  
14 Section 8–203(a)(1)  
15 Annotated Code of Maryland  
16 (2015 Replacement Volume and 2021 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article – Real Property  
19 Section 8–203(a)(3)  
20 Annotated Code of Maryland  
21 (2015 Replacement Volume and 2021 Supplement)

22 BY adding to  
23 Article – Real Property  
24 Section 8–203.2  
25 Annotated Code of Maryland  
26 (2015 Replacement Volume and 2021 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – Real Property**

4 8–203.

5 (a) (1) In this section the following words have the meanings indicated.

6 (3) (I) “Security deposit” means any payment of money, including  
7 payment of the last month’s rent in advance of the time it is due, given to a landlord by a  
8 tenant in order to protect the landlord against nonpayment of rent, damage due to breach  
9 of lease, or damage to the leased premises, common areas, major appliances, and  
10 furnishings.

11 (II) “SECURITY DEPOSIT” DOES NOT INCLUDE A FEE IN LIEU OF  
12 A SECURITY DEPOSIT UNDER § 8–203.2 OF THIS SUBTITLE.

13 **8–203.2.**

14 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
15 INDICATED.

16 (2) “SECURITY DEPOSIT” HAS THE MEANING STATED IN § 8–203 OF  
17 THIS SUBTITLE.

18 (3) “UNPAID SUMS DUE UNDER THE LEASE” MEANS:

19 (I) ANY UNPAID RENT;

20 (II) DAMAGE DUE TO BREACH OF LEASE; OR

21 (III) DAMAGE BY THE TENANT OR THE TENANT’S FAMILY,  
22 AGENTS, EMPLOYEES, GUESTS, OR INVITEES IN EXCESS OF ORDINARY WEAR AND  
23 TEAR TO THE LEASED PREMISES, COMMON AREAS, MAJOR APPLIANCES, AND  
24 FURNISHINGS OWNED BY THE LANDLORD.

25 (B) A LANDLORD MAY OFFER A FEE IN LIEU OF A SECURITY DEPOSIT IN  
26 ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

27 (C) UNDER THIS SECTION, A LANDLORD:

28 (1) MAY NOT REQUIRE A TENANT TO PAY A FEE IN LIEU OF A  
29 SECURITY DEPOSIT;

1           **(2) MAY NOT CONSIDER A PROSPECTIVE TENANT'S CHOICE TO PAY A**  
2 **FEE IN LIEU OF A SECURITY DEPOSIT IN DETERMINING WHETHER TO APPROVE A**  
3 **TENANT'S APPLICATION FOR TENANCY;**

4           **(3) SHALL PROVIDE THE TENANT WITH THE AMOUNT OF THE FEE IN**  
5 **LIEU OF A SECURITY DEPOSIT AS WELL AS THE AMOUNT OF THE SECURITY DEPOSIT**  
6 **THAT THE LANDLORD WOULD OTHERWISE CHARGE FOR THE TENANT'S PROPERTY**  
7 **OR A SIMILAR PROPERTY; AND**

8           **(4) MAY NOT CHARGE A TENANT FOR COSTS OF REPAIRING ORDINARY**  
9 **WEAR AND TEAR AS PART OF THE FEE IN LIEU OF A SECURITY DEPOSIT.**

10           **(D) A LANDLORD THAT CHOOSES TO OFFER PROSPECTIVE TENANTS THE**  
11 **OPTION TO PAY A FEE IN LIEU OF A SECURITY DEPOSIT AT THE TIME AN**  
12 **APPLICATION FOR OCCUPANCY IS APPROVED SHALL DO SO FOR ALL PROSPECTIVE**  
13 **TENANTS WITHOUT REGARD TO THE PROSPECTIVE TENANT'S:**

14           **(1) INCOME;**

15           **(2) RACE;**

16           **(3) GENDER;**

17           **(4) DISABILITY;**

18           **(5) SEXUAL ORIENTATION;**

19           **(6) IMMIGRATION STATUS;**

20           **(7) SIZE OF HOUSEHOLD; OR**

21           **(8) CREDIT SCORE FOLLOWING APPLICATION APPROVAL.**

22           **(E) NOTWITHSTANDING THE REQUIREMENTS OF § 8-203(B) OF THIS**  
23 **SUBTITLE, IF A TENANT CHOOSES TO PAY A SECURITY DEPOSIT RATHER THAN A FEE**  
24 **IN LIEU OF A SECURITY DEPOSIT, THE TOTAL SUM OF THE SECURITY DEPOSIT MAY**  
25 **NOT EXCEED 1 MONTH'S RENT.**

26           **(F) A LANDLORD AND TENANT MAY AGREE TO A FEE IN LIEU OF A SECURITY**  
27 **DEPOSIT THAT IS RECURRING AND PAID WITH THE RENT.**

1           **(G) IF A LANDLORD AND A TENANT AGREE TO PAYMENT OF A FEE IN LIEU OF**  
2 **A SECURITY DEPOSIT, THE LANDLORD SHALL DISCLOSE IN THE TERMS OF THE**  
3 **LEASE, AND THE TENANT SHALL SEPARATELY ACKNOWLEDGE:**

4           **(1) THAT THE TENANT AGREES TO PAY, AND THE LANDLORD AGREES**  
5 **TO ACCEPT, A FEE IN LIEU OF A SECURITY DEPOSIT;**

6           **(2) THE AMOUNT AND FREQUENCY OF THE FEE IN LIEU OF A**  
7 **SECURITY DEPOSIT;**

8           **(3) WHETHER THE FEE IN LIEU OF A SECURITY DEPOSIT IS**  
9 **NONREFUNDABLE;**

10           **(4) THAT THE TENANT MAY OPT OUT OF A RECURRING FEE IN LIEU OF**  
11 **A SECURITY DEPOSIT OBLIGATION PAID WITH RENT BY PAYING THE LANDLORD THE**  
12 **FULL AMOUNT OF THE SECURITY DEPOSIT PROVIDED TO THE TENANT UNDER**  
13 **SUBSECTION (C)(3) OF THIS SECTION;**

14           **(5) THAT A TENANT PAYING A FEE IN LIEU OF A SECURITY DEPOSIT IS**  
15 **NOT PURCHASING INSURANCE AND THE TENANT IS NOT COVERED BY INSURANCE**  
16 **PURCHASED BY THE LANDLORD;**

17           **(6) THAT THE PAYMENT OF A FEE IN LIEU OF A SECURITY DEPOSIT**  
18 **DOES NOT REMOVE THE OBLIGATION OF THE TENANT TO:**

19           **(I) PAY RENT, FEES, AND ALL OTHER PAYMENTS REQUIRED BY**  
20 **THE LEASE AGREEMENT; AND**

21           **(II) RETURN THE LEASED PREMISES TO THE LANDLORD IN THE**  
22 **CONDITION REQUIRED UNDER THE LEASE;**

23           **(7) THAT THE PAYMENT OF A FEE IN LIEU OF A SECURITY DEPOSIT**  
24 **DOES NOT PRECLUDE THE LANDLORD OR AN INSURER FROM:**

25           **(I) TAKING ACTION AGAINST THE TENANT TO RECOVER ANY**  
26 **UNPAID SUMS DUE UNDER THE LEASE; OR**

27           **(II) TRANSFERRING TO A THIRD PARTY A CLAIM FOR RECOVERY**  
28 **OF ANY UNPAID SUMS DUE UNDER THE LEASE; AND**

29           **(8) THE TERMS OF ANY INSURANCE COVERAGE PURCHASED BY THE**  
30 **LANDLORD FOR ANY UNPAID SUMS UNDER THE LEASE, INCLUDING THE AMOUNT OF**  
31 **EXCLUSIONS OR CAPS ON THE INSURANCE COVERAGE, IF ANY.**

1           **(H) A LANDLORD MAY NOT CONSIDER A FEE IN LIEU OF A SECURITY DEPOSIT**  
2 **AS RENT IN ANY LEASE OR OTHER AGREEMENT.**

3           **(I) A TENANT WHO CHOOSES TO PAY A FEE IN LIEU OF A SECURITY DEPOSIT**  
4 **MAY, WITHIN 15 DAYS PRIOR TO THE COMMENCEMENT OF A TENANCY, HAVE THE**  
5 **PREMISES INSPECTED BY THE LANDLORD IN THE TENANT'S PRESENCE FOR THE**  
6 **PURPOSE OF ASSESSING THE CONDITION OF THE PREMISES AND MAKING A WRITTEN**  
7 **LIST OF ANY DAMAGE.**

8           **(J) ON THE REQUEST OF A TENANT, NOT LATER THAN 5 DAYS FOLLOWING**  
9 **THE TERMINATION OF A TENANCY BY THE TENANT, A LANDLORD OR AN AGENT OF**  
10 **THE LANDLORD SHALL INSPECT THE PREMISES IN THE TENANT'S PRESENCE TO**  
11 **ASSESS ANY DAMAGE INCURRED DURING THE TENANT'S OCCUPANCY IF THE**  
12 **TENANT:**

13           **(1) NOTIFIES THE LANDLORD OF THE TENANT'S INTENTION TO**  
14 **VACATE THE PREMISES INCLUDING THE DATE THAT THE TENANT INTENDS TO**  
15 **RETURN POSSESSION OF THE PREMISES TO THE LANDLORD; AND**

16           **(2) PROVIDES THE LANDLORD WITH THE TENANT'S NEW ADDRESS.**

17           **(K) A LANDLORD SHALL USE A FEE PAID IN LIEU OF A SECURITY DEPOSIT**  
18 **TO PURCHASE INSURANCE COVERAGE FOR UNPAID SUMS DUE UNDER THE LEASE.**

19           **(L) (1) IF A LANDLORD INTENDS TO SUBMIT A CLAIM TO AN INSURER FOR**  
20 **UNPAID SUMS DUE UNDER THE LEASE, THE LANDLORD SHALL PROVIDE THE TENANT**  
21 **WITH AN ITEMIZED LIST AND A DESCRIPTION OF THE ALLEGED UNPAID SUMS DUE**  
22 **UNDER THE LEASE, INCLUDING THE DATES THE SUMS WERE DUE.**

23           **(2) A LANDLORD MAY NOT SUBMIT A CLAIM TO AN INSURER FOR**  
24 **UNPAID SUMS DUE UNDER THE LEASE BEFORE THE TERMINATION OF A TENANCY OR**  
25 **FOR 30 DAYS FOLLOWING PROVIDING NOTICE TO A TENANT UNDER PARAGRAPH (1)**  
26 **OF THIS SUBSECTION.**

27           **(M) A LANDLORD THAT FILES A CLAIM FOR UNPAID SUMS DUE UNDER A**  
28 **LEASE SHALL:**

29           **(1) PROVIDE THE INSURER WITH AN ITEMIZED LIST AND A**  
30 **DESCRIPTION OF THE ALLEGED SUMS OWED; AND**

31           **(2) PROVIDE THE TENANT WITH NOTICE THAT A CLAIM HAS BEEN**  
32 **FILED, INCLUDING:**

1                   **(I) THE LEGAL NAME OF THE INSURER;**

2                   **(II) A PHONE NUMBER AND ADDRESS OF THE INSURER'S CLAIM**  
3 **ADJUSTMENT OFFICE;**

4                   **(III) A COMPLETE COPY OF THE CLAIM SUBMITTED TO THE**  
5 **INSURER; AND**

6                   **(IV) A STATEMENT THAT THE TENANT IS STILL RESPONSIBLE**  
7 **FOR ALL UNPAID SUMS DUE UNDER THE LEASE AND THAT THE INSURER MAY SEEK**  
8 **TO COLLECT REIMBURSEMENT FROM THE TENANT FOR AMOUNTS THAT THE**  
9 **INSURER PAYS TO THE LANDLORD.**

10           **(N) FOLLOWING THE FILING OF A CLAIM BY A LANDLORD, AN INSURER**  
11 **SHALL PROMPTLY PROVIDE TO THE TENANT:**

12                   **(1) AN ITEMIZED LIST AND WRITTEN DESCRIPTION OF THE UNPAID**  
13 **SUMS OWED UNDER THE LEASE THAT WERE SUBMITTED TO THE INSURER BY THE**  
14 **LANDLORD, INCLUDING THE DATES WHEN UNPAID SUMS WERE DUE;**

15                   **(2) A STATEMENT OF COSTS ACTUALLY INCURRED TO REPAIR**  
16 **DAMAGES IN EXCESS OF ORDINARY WEAR AND TEAR THAT WERE PROVIDED TO THE**  
17 **INSURER BY THE LANDLORD; AND**

18                   **(3) DOCUMENTATION OF PAYMENTS MADE BY THE INSURER TO THE**  
19 **LANDLORD FOR THE CLAIM.**

20           **(O) (1) AN INSURER MAY NOT REPORT A CLAIM FILED BY A LANDLORD**  
21 **UNDER THIS SUBSECTION TO A CREDIT REPORTING AGENCY UNLESS A JUDGMENT**  
22 **HAS BEEN OBTAINED AGAINST THE TENANT.**

23                   **(2) UNLESS A LANDLORD AND TENANT HAVE OTHERWISE AGREED IN**  
24 **WRITING, AN INSURER SHALL SEEK REIMBURSEMENT FOR SUMS OWED UNDER A**  
25 **LEASE WITHIN 1 YEAR AFTER THE DATE THE LANDLORD'S CLAIM WAS FILED WITH**  
26 **THE INSURER.**

27           **(P) A TENANT MAY DISPUTE A CLAIM FILED BY A LANDLORD WITH AN**  
28 **INSURER UNDER THIS SUBSECTION BY SENDING A RESPONSE TO THE INSURER**  
29 **WITHIN 30 DAYS AFTER RECEIVING NOTICE THAT A CLAIM HAS BEEN FILED BY THE**  
30 **LANDLORD.**

1           **(Q) A LANDLORD MAY NOT ACCEPT PAYMENTS FROM A TENANT AND AN**  
2 **INSURER THAT COLLECTIVELY EXCEED THE SUMS DUE UNDER THE LEASE.**

3           **(R) IN A PROCEEDING AGAINST THE TENANT BY THE INSURER, THE TENANT**  
4 **SHALL:**

5                   **(1) RETAIN ALL RIGHTS AND DEFENSES OTHERWISE AVAILABLE IN A**  
6 **PROCEEDING BETWEEN A TENANT AND A LANDLORD; AND**

7                   **(2) BE LIABLE TO THE INSURER ONLY FOR SUMS DUE UNDER THE**  
8 **LEASE.**

9           **(S) (1) A TENANT MAY CHALLENGE CLAIMS BY A LANDLORD FOR SUMS**  
10 **DUE UNDER A LEASE IN COURT.**

11                   **(2) IF A COURT DETERMINES THAT THE NOTICE OF UNPAID SUMS DUE**  
12 **UNDER THE LEASE REQUIRED UNDER SUBSECTION (L)(1) OF THIS SECTION IS**  
13 **INCORRECT, THE UNPAID SUMS UNDER THE LEASE CLAIMED BY THE LANDLORD**  
14 **SHALL BE DECLARED VOID.**

15                   **(3) A LANDLORD MAY NOT SUBMIT A CLAIM TO AN INSURER FOR ANY**  
16 **DEBT THAT HAS BEEN DECLARED VOID UNDER THIS SUBSECTION AND SHALL**  
17 **IMMEDIATELY WITHDRAW A CLAIM IF THE AMOUNT IS DECLARED VOID FOLLOWING**  
18 **THE SUBMISSION OF THE CLAIM.**

19                   **(4) IF A DEBT IS DECLARED VOID AFTER AN INSURER HAS PAID THE**  
20 **CLAIM, THE LANDLORD SHALL RETURN THE PAYMENT TO THE INSURER.**

21           **(T) (1) A LANDLORD OR AN INSURER THAT FAILS TO COMPLY WITH THE**  
22 **REQUIREMENTS OF THIS SECTION FORFEITS ANY CLAIM TO COLLECT UNPAID SUMS**  
23 **DUE UNDER THE LEASE.**

24                   **(2) IF IN ANY PROCEEDING A COURT DETERMINES THAT A LANDLORD**  
25 **OR AN INSURER MATERIALLY VIOLATED THIS SECTION, THE TENANT MAY RECOVER**  
26 **DAMAGES NOT LESS THAN 2 MONTHS' RENT PAID BY THE TENANT AND REASONABLE**  
27 **ATTORNEY'S FEES.**

28           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
29 apply only prospectively and may not be applied or interpreted to have any effect on or  
30 application to any lease entered into before the effective date of this Act.

31           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2022.