

1 **Senate Bill No. 545**

2 (By Senators Palumbo, Beach, Snyder, Yost, Klempa, Kessler
3 (Acting President), Browning, Foster, Williams, Unger, Jenkins,
4 McCabe and Plymale)

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6 [Introduced February 18, 2011; referred to the Committee on the
7 Judiciary.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §37-6A-1, §37-6A-2,
13 §37-6A-3, §37-6A-4, §37-6A-5 and §37-6A-6, all relating to
14 residential rental security deposits; relevant definitions;
15 security deposits; maintenance of records; prohibited
16 provisions in rental agreements; remedies upon landlord's
17 noncompliance; application of article; and security deposits
18 prior to effective date of article.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article, designated §37-6A-1, §37-6A-2,
22 §37-6A-3, §37-6A-4, §37-6A-5 and §37-6A-6, all to read as follows:

23 **ARTICLE 6A. RESIDENTIAL RENTAL SECURITY DEPOSITS.**

24 **§37-6A-1. DEFINITIONS.**

1 When used in this article, unless expressly stated otherwise:

2 (1) "Action" means recoupment, counterclaim, set off or other
3 civil suit and any other proceeding in which rights are determined,
4 including without limitation actions for possession, rent, unlawful
5 detainer, unlawful entry and distress for rent;

6 (2) "Application fee" means any deposit of money, however
7 denominated, which is paid by a tenant to a landlord, lessor or
8 agent of a landlord for the purpose of being considered as a tenant
9 for a dwelling unit;

10 (3) "Dwelling unit" means structure or a part of a structure
11 that is used as a home or residence by one or more persons who
12 maintain a household, including, but not limited to, a manufactured
13 home;

14 (4) "Facility" means something that is built, constructed,
15 installed or established to perform some particular function;

16 (5) "Landlord" means the owner or lessor of the dwelling unit
17 or the building of which such dwelling unit is a part. "Landlord"
18 also includes the managing agent of the premises who fails to
19 disclose the name of such owner or lessor;

20 (6) "Managing agent" means a person authorized by the landlord
21 to act on behalf of the landlord under a management agreement;

22 (7) "Owner" means one or more persons, jointly or severally,
23 in whom is vested:

24 (A) All or part of the legal title to the property, or

1 (B) All or part of the beneficial ownership and a right to
2 present use and enjoyment of the premises, and the term includes a
3 mortgagee in possession;

4 (8) "Person" means any individual, group of individuals,
5 corporation, partnership, business trust, association or other
6 legal entity, or any combination thereof;

7 (9) "Premises" means a dwelling unit and the structure of
8 which it is a part and facilities and appurtenances therein and
9 grounds, areas, and facilities held out the use of tenants
10 generally or whose use is promised to the tenant;

11 (10) "Rent" means all money, other than a security, a
12 nonrefundable fee or money paid to the landlord by the tenant for
13 damage caused by the tenant to the dwelling unit, owed or paid to
14 the landlord under the rental agreement;

15 (11) "Rental agreement" means all agreements, written,
16 including an electronic record as defined by subdivision (7),
17 section two, article one, chapter thirty-nine-a of the code, or
18 oral, express and implied, embodying the terms and conditions
19 concerning the use and occupancy of a dwelling unit and premises;

20 (12) "Roomer" means a person occupying a dwelling unit that
21 lacks a major bathroom or kitchen facility, in a structure where
22 one or more major facilities are used in common by occupants of the
23 dwelling unit and other dwelling units. Major facility in the case
24 of a bathroom means a toilet, and either a bath or shower, and in

1 the case of a kitchen means refrigerator, stove or sink;

2 (13) "Security deposit" means any refundable deposit of money
3 that is furnished by a tenant to a landlord to secure the
4 performance of the terms and conditions of a rental agreement, or
5 as security for damages to the leased premises. Security deposit
6 does not include rent, other than prepaid rent, a pet fee or an
7 application fee: *Provided*, That the parties expressly agree, in
8 writing, that a pet fee or application fee is nonrefundable;

9 (14) "Sublease" means the transfer by any tenant of any but
10 not all interests created by a rental agreement;

11 (15) "Tenant" means a person entitled under a rental agreement
12 to occupy a dwelling unit to the exclusion of others shall include
13 a roomer;

14 (16) "Utility" means electricity, natural gas, propane gas,
15 water, sewer, telephone and cable television provided by a public
16 utility or such person providing residential utility services. If
17 the rental agreement so provides, a landlord may use submetering
18 equipment or energy allocation equipment, or a ratio utility
19 billing system.

20 **§37-6A-2. Security Deposits.**

21 (a) Within thirty days of termination of the tenancy, any
22 security deposit held by a landlord, minus any deductions for
23 damages or other charge, shall be delivered to the tenant, together
24 with a written itemization of any such damages or other charges as

1 provided in subsection (c).

2 (b) Upon termination of the tenancy, any security deposit held
3 by the landlord may be applied by the landlord only to:

4 (1) The payment of accrued rent, including the reasonable
5 charges for late payment of rent specified in the rental agreement;

6 (2) The payment of the amount of damages which the landlord
7 has suffered by a reason of the tenant's noncompliance with the
8 rental agreement, less reasonable wear and tear;

9 (3) The payment of unpaid utilities in the name of the
10 landlord that the rental agreement provided were to be paid by the
11 tenant that were actually used by the tenant prior to the
12 termination of the tenancy;

13 (4) The payment of reasonable costs for the removal and
14 storage of the tenant's personal property. The landlord may
15 dispose of the stored personal property pursuant to the provisions
16 of subdivisions (1) through (3), subsection (h), section three,
17 article three-A, chapter fifty-five of this code; and

18 (5) To the damages or charges as provided in the rental
19 agreement, including but limited to, paying for the services of a
20 third party contractor to repair damages to the property caused by
21 the tenant.

22 (c) The landlord shall notify, in writing, the tenant of any
23 deductions to be made from the tenant's security deposit during the
24 course of the tenancy of which the landlord is aware. Such

1 notification shall not be required for deductions made less than
2 thirty days prior to the termination of the rental agreement. A
3 landlord who makes any deductions from the tenant's security
4 deposit pursuant to this section may not use the circumstances
5 related to the deduction as a basis for the termination of the
6 tenancy.

7 (d) In the event that damages to the premises exceed the
8 amount of the security deposit and require the services of a third
9 party contractor, the landlord shall give a written notice to the
10 tenant, advising him or her of that fact, within the applicable
11 notice period. If notice is given as prescribed in this
12 subsection, the landlord shall have an additional fifteen day
13 period to provide an itemization of the damages and the cost of
14 repair.

15 (e) Nothing in this section entitles the tenant, upon the
16 termination of the tenancy, to a immediate credit against the
17 tenant's delinquent rent account in the amount of the security
18 deposit.

19 (f) The holder of the landlord's interest in the premises at
20 the time of the termination of the tenancy, regardless of how the
21 interest is acquired or transferred, is bound by this section and
22 shall be required to return any security deposit received by the
23 original landlord that is duly owed to the tenant. The provisions
24 of this subsection apply whether or not such security deposit is

1 transferred with the landlord's interest by law or equity, and
2 regardless of any contractual agreements between the original
3 landlord and his or her successors in interest.

4 (g) If the tenant has any assignee or sublessee, the landlord
5 is entitled to hold a security deposit from only one party in
6 compliance with the provisions of this section.

7 (h) For the purposes of this section, the delivery to a tenant
8 of a security deposit and/or any notice prescribed by this section,
9 may be accomplished by either personal delivery to the tenant, or
10 by mailing the deposit and/or notice to the tenant's last known
11 address or forwarding address as provided by the tenant.

12 **§37-6A-3. Maintenance of records by landlord.**

13 The landlord shall:

14 (1) Maintain and itemize records for each tenant of all
15 deductions from security deposits provided under this article which
16 the landlord has made by reason of a tenant's noncompliance with
17 the rental agreement for one year after the termination of the
18 tenancy; and

19 (2) Permit a tenant or his or her authorized agent or attorney
20 to inspect such tenant's records of deductions at any time during
21 normal business hours within seventy-two hours of a written
22 request.

23 **§37-6A-4. Prohibited provision in rental agreements.**

24 A rental agreement may not contain a provision that the tenant

1 agrees to waive or forego rights or remedies under this article.

2 A provision prohibited by this section included in a rental
3 agreement is unenforceable. If a landlord brings an action to
4 enforce any of the prohibited provisions, the tenant may recover
5 actual damages sustained by him or her and reasonable attorney's
6 fees.

7 **§37-6A-5. Landlord's noncompliance.**

8 (a) If a landlord fails to comply with any of the provisions of
9 this article, and such noncompliance is willfully or not in good
10 faith, the tenant is entitled to a judgement for:

11 (1) The amount of any unreturned security deposit;

12 (2) Damages for annoyance or inconvenience resulting from the
13 landlord's nonconformance equal to three times the amount of the
14 tenant's security deposit, unless the tenant owes rent to the
15 landlord, in which case, the court shall order an amount equal to
16 any amount rewarded to the tenant pursuant to this subsection to be
17 credited against any rent due to the landlord; and

18 (3) Reasonable attorney fees.

19 (b) This section does limit rights or remedies available to a
20 landlord under any other law.

21 **§37-6A-6. Application and effective date of this article.**

22 (a) The provisions of this article shall apply to all rental
23 premises or units used for dwelling purposes.

24 (b) The provisions of this article do not apply to agreements

1 for the payment of security deposits entered into prior to the
2 effective date of this article.

NOTE: The purpose of this bill is to require landlords to return security deposits to tenants within thirty days, unless an exception applies, and provides penalties for noncompliance.

This article is new; therefore, strike-throughs and underscoring have been omitted.