

1 **H. B. 3039**

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3 (By Delegates Shott, Gearheart and Ellington)

4 [Introduced March 21, 2013; referred to the

5 Committee on the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by

11 adding thereto a new section, designated §37-6-31, relating to

12 the right of the landlord of commercial premises to terminate

13 the lease under certain circumstances and providing a process

14 for the termination.

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

16 That the Code of West Virginia, 1931, as amended, be amended

17 by adding thereto a new section, designated §37-6-31, to read as

18 follows:

19 **ARTICLE 6. LANDLORD AND TENANT.**

20 **§37-6-31. Landlord's right to terminate lease of commercial**

21 **premises if tenant fails to use premises for agreed**

22 **purpose.**

23 (a) With respect to commercial property comprised of multiple

1 units and intended to be occupied by more than one commercial
2 tenant, a landlord has the right to terminate a tenant's lease even
3 if the tenant is paying rent in accordance with the terms of the
4 lease if:

5 (1) The lease specifies a commercial purpose for which the
6 leased property is to be used by the tenant; and

7 (2) (A) The tenant fails to commence using the leased property
8 for the purpose specified in the lease; or

9 (B) Commences using the leased property for a purpose
10 different than that which is specified in the lease and to which
11 the landlord has not agreed in writing; and, if

12 (3) The period of nonuse or unpermitted use continues for at
13 least sixty consecutive days following delivery of a written demand
14 from landlord for tenant to commence using the leased property for
15 the purpose specified in the lease; and

16 (4) The nonuse or unpermitted use by the tenant has an adverse
17 economic effect upon landlord and at least one of the landlord's
18 other tenants; and

19 (5) In the case of nonuse, the lease does not expressly permit
20 the tenant to refrain from using the premises for the purpose
21 specified in the lease nor designate the period during which the
22 nonuse is permitted.

23 (b) In order to exercise its right to terminate, the landlord
24 shall deliver to the tenant a written notice of the termination at

1 least sixty days prior to the effective date of the termination.

2 (c) The termination of the lease under the authority of this
3 section operates to extinguish all of the respective rights and
4 obligations of the parties except the landlord's right to collect
5 all unpaid rent and other financial obligations of the tenant and
6 all other rights and obligations which would survive the
7 termination under the express terms of the lease.

8 (d) This section does not replace or limit any other remedy
9 available to the landlord under the lease or applicable law.

NOTE: The purpose of this bill is to permit a landlord to terminate a lease of a portion of a multi-tenant commercial property if the tenant fails the use the premises for the purpose specified in the lease, and the tenant's use or nonuse produces an adverse economic effect upon the landlord or another tenant of the property. It establishes a procedure for notifying the tenant and allows the tenant time to commence using the premises for its agreed purpose. It also requires the landlord to notify the tenant of the termination of the lease if the tenant fails to commence using the premises within the specified time.

This section is new; therefore, it has been completely underscored.