

1 **Senate Bill No. 541**

2 (By Senators McCabe, Beach and Palumbo)

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4 [Introduced February 12, 2014; referred to the Committee on the
5 Judiciary.]
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10 A BILL to amend and reenact §55-3A-1 of the Code of West Virginia,
11 1931, as amended, relating to remedies for wrongful occupation
12 of residential rental property; defining "agent of the owner";
13 and providing certain rights to tenants who have the authority
14 to sublet their leased premises.

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

16 That §55-3A-1 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL**
19 **RENTAL PROPERTY.**

20 **§55-3A-1. Petition for summary relief for wrongful occupation of**
21 **residential rental property.**

22 (a) A person desiring to remove a tenant from residential
23 rental property may apply for ~~such~~ that relief to the magistrate

1 court or the circuit court of the county in which ~~such~~ the property
2 is located, by verified petition, setting forth the following:

3 (1) That he or she is the owner or agent of the owner and ~~as~~
4 ~~such~~ has a right to recover possession of the property;

5 (2) A brief description of the property sufficient to identify
6 it;

7 (3) That the tenant is wrongfully occupying ~~such~~ the property
8 in that the tenant is in arrears in the payment of rent, has
9 breached a warranty or a leasehold covenant, or has deliberately or
10 negligently damaged the property or knowingly permitted another
11 person to do so, and describing ~~such~~ the arrearage, breach or act
12 or omission; and

13 (4) A prayer for possession of the property.

14 (b) Previous to the filing of the petition the person shall
15 request from the court the time and place at which the petitioner
16 shall be heard. The court shall fix a time for ~~such~~ the hearing,
17 which time ~~shall~~ may not be less than five nor more than ten
18 judicial days following ~~such~~ the request.

19 (c) Immediately upon being apprised of the time and place for
20 hearing the petitioner shall cause a notice of the ~~same~~ hearing to
21 be served upon the tenant in accordance with the provisions of Rule
22 4 of the West Virginia Rules of Civil Procedure or by certified
23 mail, return receipt requested. ~~Such~~ The notice shall inform the
24 tenant that any defense to the petition must be submitted in

1 writing to the petitioner within five days of the receipt by the
2 tenant of the notice, and in no case later than the fifth day next
3 preceding the date of hearing. Upon receipt of the return of
4 service or the return receipt as the case may be, evidencing
5 service upon the tenant, the petitioner shall file with the court
6 his or her petition and ~~such~~ the proof of service.

7 (d) For purposes of this article, the phrase "agent of the
8 owner" includes any person who is authorized to act for or in place
9 of the owner. A tenant whose written lease agreement explicitly
10 gives the tenant the right to sublet all or a portion of the leased
11 premises is an "agent of the owner" with respect to other tenants
12 occupying the property as part of a subletting agreement for the
13 purposes of this article only.

(NOTE: The purpose of this bill is to ensure that tenants who have the right to sublet their leased property have remedies for wrongful occupation of residential rental property available to them with respect to the subletting individuals.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)