

No. 1209

APPROVED AND SIGNED BY THE GOVERNOR

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OFFICE OF THE GOVERNOR

Date 3-29-83

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1209

(By Mr. Whitlow)

— ● —

Passed March 12, 1983

In Effect Ninety Days From Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 1209**  
**(By MR. WHITLOW)**

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[Passed March 12, 1983; in effect ninety days from passage.]

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AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to terminating a tenancy for wrongful occupation of residential property; petition for relief; defenses available; and proceedings in court.

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

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

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

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

1       (a) A person desiring to remove a tenant from residential  
2 rental property may apply for such relief to the magistrate  
3 court or the circuit court of the county in which such property  
4 is located, by verified petition, setting forth the following:

5       (1) That he is the owner or agent of the owner and as such  
6 has a right to recover possession of the property;

7 (2) A brief description of the property sufficient to identify  
8 it;

9 (3) That the tenant is wrongfully occupying such property  
10 in that the tenant is in arrears in the payment of rent, has  
11 breached a warranty or a leasehold covenant, or has deliber-  
12 ately or negligently damaged the property or knowingly per-  
13 mitted another person to do so, and describing such arrearage,  
14 breach, or act or omission; and

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

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

21 (c) Immediately upon being apprised of the time and  
22 place for hearing the petitioner shall cause a notice of the  
23 same to be served upon the tenant in accordance with the  
24 provisions of Rule 4 of the West Virginia Rules of Civil  
25 Procedures or by certified mail, return receipt requested.  
26 Such notice shall inform the tenant that any defense to the  
27 petition must be submitted in writing to the petitioner within  
28 five days of the receipt by the tenant of the notice, and in  
29 no case later than the fifth day next preceding the date of  
30 hearing. Upon receipt of the return of service or the return  
31 receipt as the case may be, evidencing service upon the tenant,  
32 the petitioner shall file with the court his petition and such  
33 proof of service.

**§55-3A-2. Defenses available.**

1 In a proceeding under the provisions of this article, a  
2 tenant against whom a petition has been brought may assert  
3 any and all defenses which might be raised in an action for  
4 ejectment or an action for unlawful detainer.

**§55-3A-3. Proceedings in court; final order.**

1 (a) If at the time of the hearing there has been no appear-  
2 ance, answer or other responsive pleading filed by the tenant,

3 the court shall make and enter an order granting immediate  
4 possession of the property to the petitioner.

5 (b) In the case of a petition alleging arrearage in rent,  
6 if the tenant shall file an answer raising the defense of breach  
7 by the landlord of a material covenant upon which the duty to  
8 pay rent depends, the court shall proceed to a hearing on such  
9 issues.

10 (c) In the case of a petition alleging a breach by the  
11 tenant or damage to the property, if the defendant shall file  
12 an answer raising defenses to the claim or claims set forth  
13 in the petition the court shall proceed to a hearing on such  
14 issues.

15 (d) Continuances of the hearing provided for in this sec-  
16 tion shall be for cause only and the judge or magistrate  
17 shall not grant a continuance to either party as a matter of  
18 right. If a continuance is granted upon request by a tenant,  
19 the tenant shall be required to pay into court any periodic  
20 rent becoming due during the period of such continuance.

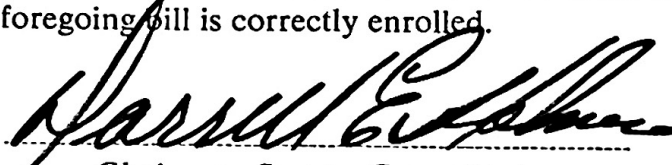
21 (e) At the conclusion of a hearing held under the pro-  
22 visions of subsection (b) or (c) of this section if the court  
23 shall find that the tenant is in wrongful occupation of the  
24 rental property the court shall make and enter an order grant-  
25 ing immediate possession of the property to the petitioner.  
26 In the case of a proceeding under subsection (a) of this section  
27 the court may also make a written finding and include in its  
28 order such relief on the issue of arrearage in the payment of  
29 rent as the evidence may require. Any moneys paid into court  
30 by the tenant in accordance with the provisions of this section  
31 may be ordered to be disbursed to the parties as may be  
32 appropriate under the findings of the court.

33 (f) Taking into consideration such factors as the nature  
34 of the property (i.e., furnished or unfurnished) the possibility  
35 of relative harm to the parties and other material facts deemed  
36 relevant by the court in considering the time in which the  
37 tenant might reasonably be expected to vacate the premises,  
38 the court shall in its order specify the time by which the  
39 tenant must remove himself from the property. The order

40 shall further provide that if the tenant still wrongfully oc-  
41 cupies the property beyond such time the sheriff shall forth-  
42 with remove him, taking such precautions as are necessary to  
43 guard against damage to the property of the landlord and the  
44 tenant.

45 (g) Absent an issue of title, retaliation, or breach of warran-  
46 ty, and in the event of an appeal wherein the tenant prevails,  
47 if the term of the lease has expired the relief ordered by the  
48 appellate court shall be for monetary damages only and shall  
49 not restore the tenant to possession. During the pendency of  
50 any such appeal no tenant shall be entitled to remain in pos-  
51 session of the leasehold if the period of the tenancy has other-  
52 wise expired.

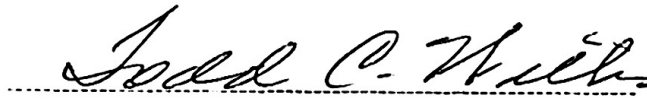
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

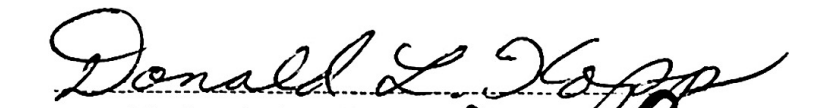

  
Chairman Senate Committee

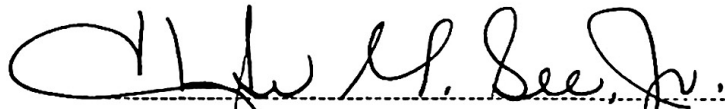
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates  
  
President of the Senate

  
Speaker House of Delegates

The within in approved this the 29  
day of March, 1983.

  
Governor

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