

HB 3202

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**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2011



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 3202**

(By Delegates Miley, Caputo, Skaff, Fleischauer,  
Manchin, Lawrence, Poore, Lane, Sobonya and Pasdon)



Passed March 12, 2011

In Effect Ninety Days From Passage

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**E N R O L L E D**

OFFICE OF WEST VIRGINIA  
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COMMITTEE SUBSTITUTE

FOR

**H. B. 3202**

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(BY DELEGATES MILEY, CAPUTO, SKAFF, FLEISCHAUER  
MANCHIN, LAWRENCE, POORE, LANE, SOBONYA AND PASDON)

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[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §37-6A-1, §37-6A-2, §37-6A-3, §37-6A-4, §37-6A-5 and §37-6A-6, all relating to residential rental security deposits; providing relevant definitions; providing for deduction from and returning of security deposits; maintaining records; prohibiting certain provisions in rental agreements; providing remedies upon landlord's noncompliance; setting forth application of article; and providing for security deposits prior to effective date of article.

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

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

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

**§37-6A-1. Definitions.**

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

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

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

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

16           (4) "Facility" means something that is built, constructed,  
17 installed or established to perform some particular function.

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

22 (6) “Managing agent” means a person authorized by the  
23 landlord to act on behalf of the landlord under a management  
24 agreement.

25 (7) “Notice period” means: (A) within 60 days of the  
26 termination of the tenancy; or (B) within 45 days of the  
27 occupation of the premise by a subsequent tenant, whichever  
28 time period is shorter.

29 (8) “Owner” means one or more persons, jointly or  
30 severally, in whom is vested:

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

32 (B) All or part of the beneficial ownership and a right to  
33 present use and enjoyment of the premises, and the term  
34 includes a mortgagee in possession.

35 (9) “Person” means any individual, group of individuals,  
36 corporation, partnership, business trust, association or other  
37 legal entity, or any combination thereof.

38 (10) “Premises” means a dwelling unit and the structure  
39 of which it is a part and facilities and appurtenances therein  
40 and grounds, areas and facilities held out for the use of  
41 tenants generally or whose use is promised to the tenant.

42 (11) “Rent” means all money, other than a security  
43 deposit, a nonrefundable fee or money paid to the landlord by  
44 the tenant for damage caused by the tenant to the dwelling  
45 unit, owed or paid to the landlord under the rental agreement.

46 (12) “Rental agreement” means all agreements, written  
47 (including an electronic record as defined by paragraph (7),  
48 section two, article one, chapter thirty-nine-a of the code) or  
49 oral, express or implied, embodying the terms and conditions

50 concerning the use and occupancy of a dwelling unit and  
51 premises.

52 (13) "Roomer" means a person occupying a dwelling unit  
53 that lacks a major bathroom or kitchen facility, in a structure  
54 where one or more major facilities are used in common by  
55 occupants of the dwelling unit and other dwelling units.  
56 Major facility in the case of a bathroom means toilet, and  
57 either a bath or shower, and in the case of a kitchen means  
58 refrigerator, stove or sink.

59 (14) "Security deposit" means any refundable deposit of  
60 money that is furnished by a tenant to a landlord to secure the  
61 performance of the terms and conditions of a rental  
62 agreement, or as security for damages to the leased premises.  
63 Security deposit does not include: (A) Rent; (B) a pet fee; or  
64 (C) application fee: *Provided*, That the parties expressly  
65 agree, in writing, that a pet fee or application fee is  
66 nonrefundable. A security deposit does not include prepaid  
67 rent.

68 (15) "Sublease" means the transfer by any tenant of any  
69 but not all interests created by a rental agreement.

70 (16) "Tenant" means a person entitled under a rental  
71 agreement to occupy a dwelling unit to the exclusion of  
72 others and shall include a roomer.

73 (17) "Utility" means electricity, natural gas, propane gas,  
74 water, sewer, telephone and cable television provided by a  
75 public utility or such other person providing residential utility  
76 services. If the rental agreement so provides, a landlord may  
77 use submetering equipment or energy allocation equipment,  
78 or a ratio utility billing system.

**§37-6A-2. Security deposits.**

1 (a) Upon termination of the tenancy and within the  
2 applicable notice period, any security deposit held by the  
3 landlord, minus any deductions for damages or other charges,  
4 shall be delivered to the tenant, together with a written  
5 itemization of any such damages or other charges as provided  
6 in subsection (c).

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

9 (1) The payment of rent due, including the reasonable  
10 charges for late payment of rent specified in the rental  
11 agreement;

12 (2) The payment of the amount of damages which the  
13 landlord has suffered by reason of the tenant's  
14 noncompliance with the rental agreement, less reasonable  
15 wear and tear;

16 (3) The payment of unpaid utilities that were billed to and  
17 paid by the landlord, are the obligation of the tenant under the  
18 rental agreement and unpaid by the tenant;

19 (4) The payment of reasonable costs for the removal and  
20 storage of the tenant's personal property. The landlord may  
21 dispose of the stored personal property pursuant to the  
22 provisions of subdivisions (1) through (3), subsection (h),  
23 section three, article three-a, chapter fifty-five of this code;  
24 and

25 (5) To other damages or charges as provided in the rental  
26 agreement, including but not limited to, paying for the  
27 services of a third party contractor to repair damages to the  
28 property caused by the tenant.

29 (c) In the event that damages to the premises exceed the  
30 amount of the security deposit and require the services of a

31 third party contractor, the landlord shall give written notice  
32 to the tenant, advising him or her of that fact, within the  
33 applicable notice period. If notice is given as prescribed in  
34 this subsection, the landlord shall have an additional fifteen  
35 day period to provide an itemization of the damages and the  
36 cost of repair.

37 (d) Nothing in this section shall be construed by a court  
38 of law or otherwise as entitling the tenant, upon the  
39 termination of the tenancy, to an immediate credit against the  
40 tenant's delinquent rent account in the amount of the security  
41 deposit.

42 (e) The holder of the landlord's interest in the premises  
43 at the time of the termination of the tenancy, regardless of  
44 how the interest is acquired or transferred, is bound by this  
45 section and shall be required to return any security deposit  
46 received by the original landlord that is duly owed to the  
47 tenant. The provisions of this subsection apply whether or  
48 not such security deposit is transferred with the landlord's  
49 interest by law or equity, and regardless of any contractual  
50 agreements between the original landlord and his or her  
51 successors in interest.

52 (f) If the tenant has any assignee or sublessee, the  
53 landlord shall be entitled to hold a security deposit from only  
54 one party in compliance with the provisions of this section.

55 (g) For the purposes of this section, the delivery to a  
56 tenant of a security deposit and/or any notice prescribed by  
57 this section, may be accomplished by either personal delivery  
58 to the tenant, or by mailing the deposit and/or notice to the  
59 tenant's last known address or forwarding address as  
60 provided by the tenant. It shall be the responsibility of the  
61 tenant to provide an accurate address to the landlord. If  
62 personal delivery is not reasonably possible and a deposit or

63 notice mailed to the tenant at his or her last known address or  
64 forwarding address provided is returned as non-deliverable,  
65 then the landlord shall hold the deposit or notice for the  
66 period of six months, to be personally delivered to the tenant,  
67 or his or her authorized agent or attorney, at the landlord's  
68 place of business during normal business hours within  
69 seventy-two hours after a written request is received from the  
70 tenant.

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

1 The landlord shall:

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

7 (2) Either permit a tenant or his or her authorized agent  
8 or attorney to inspect the tenant's records of deductions at  
9 any time during normal business hours within seventy-two  
10 hours of a written request, or at the landlord's option, provide  
11 a tenant or his or her authorized agent or attorney a copy of  
12 the tenant's record of deductions during normal business  
13 hours within seventy-two hours of a written request.

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

1 A rental agreement may not contain a provision that the  
2 tenant agrees to waive or forego rights or remedies under this  
3 article. A provision prohibited by this section included in a  
4 rental agreement is unenforceable. If a landlord brings an  
5 action to enforce any of the prohibited provisions, the tenant  
6 may recover actual damages sustained by him or her and  
7 reasonable attorney's fees.

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

1 (a) If a landlord fails to comply with any of the  
2 provisions of this article, and such noncompliance is willful  
3 or not in good faith, the tenant is entitled to a judgment for:

4 (1) The amount of any unreturned security deposit; and

5 (2) Damages for annoyance or inconvenience resulting  
6 from the landlord's nonconformance equal to one and a half  
7 times the amount wrongfully withheld, unless the tenant  
8 owes rent to the landlord, in which case, the court shall order  
9 an amount equal to any amount awarded to the tenant  
10 pursuant to this subsection to be credited against any rent due  
11 to the landlord.

12 (b) Jurisdiction for any civil action brought pursuant to  
13 this article shall be in magistrate court or circuit court in the  
14 county where the residential rental premises or units are  
15 located.

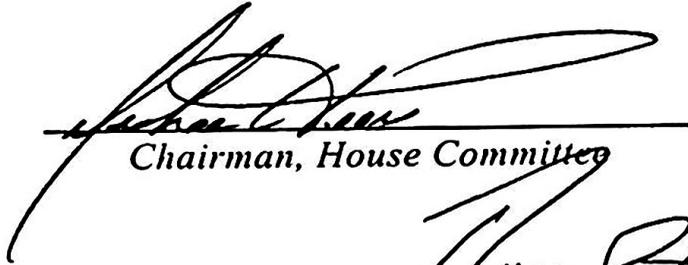
16 (c) This section does not limit rights or remedies  
17 available to a landlord or tenant under any other law.

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

1 (a) The provisions of this article shall apply to all  
2 residential rental premises or units used for dwelling  
3 purposes.

4 (b) The provisions of this article do not apply to  
5 agreements for the payment of security deposits entered into  
6 prior to the effective date of this article.

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

  
Chairman, House Committee

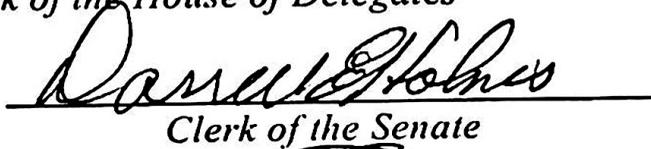
  
Chairman, Senate Committee

Originating in the House.

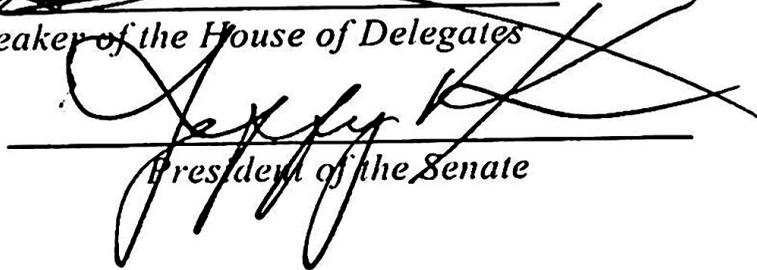
To take effect ninety days from passage.

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OFFICE OF THE SECRETARY OF STATE  
COMMONWEALTH OF VIRGINIA

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
President of the Senate

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 31 2011

Time 11:30 am  
ET 6