

- SUBJECT:** Modifying requirements for late rent fees charged to tenants
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 4 ayes — Oliveira, Shine, Villalba, Workman
3 nays — Collier, Romero, Stickland
- WITNESSES:** For — Mark Hurley, David Mintz, and William Warren, Texas Apartment Association; (*Registered, but did not testify:* D.J. Pendleton, Texas Manufactured Housing Association)

Against — Juliana Gonzales, Austin Tenants' Council; Charlie Duncan, Texas Low Income Housing Information Service; Nelson Mock; Britton Monts; Jason Snell; Martin Weber
- BACKGROUND:** Property Code, sec. 92.019(a) prohibits a landlord from charging a tenant a fee for late rent payment unless:
- notice of the fee is included in a written lease;
 - the fee is a reasonable estimate of uncertain damages to the landlord resulting from late payment of rent; and
 - the rent remained unpaid at least one full day after it was due.
- Sec. 92.019(b) specifies that a late fee may include an initial fee and a daily fee for each day the rent remains unpaid.
- DIGEST:** CSHB 1821 would prohibit a landlord from charging a tenant an initial fee for late payment that exceeded 8 percent of one month's rent. The daily fee for late payment could not exceed 1 percent of one month's rent, and the landlord could not collect daily fees for more than 15 days.
- The bill would remove the provision requiring landlords to base the late fee on a reasonable estimate of uncertain damages to the landlord.
- The bill would take effect January 1, 2018, and would apply only to a

lease entered into or renewed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1821 would provide clarity to landlords and renters about the maximum fee for late payment of rent. The current requirement that late fees not exceed a "reasonable estimate" of resulting costs to the landlord is vague and not uniformly enforced by the various courts across Texas. By providing fee maximums, the bill would guarantee that both landlords and tenants clearly understood their contractual obligations.

The bill would not result in increased late rent payment fees. Many landlords who currently charge fees in excess of the bill's maximum amount would have to lower their fees. Also, nothing in current statute sets a maximum amount of fees that may be charged for late payment, which allows for abusive and excessive fees.

CSHB 1821 would not damage the rights of tenants but rather would ensure that they were informed about the penalties for late payment. The current "reasonable estimate" standard is ambiguous and forces landlords to spend time and resources fighting burdensome class-action lawsuits.

The bill also would not inhibit the operation of the free market but would place a necessary check on the currently unconstrained power of landlords to charge late rent payment fees. Its requirements would be flexible enough to allow landlords to choose from a variety of rates.

**OPPONENTS
SAY:**

CSHB 1821 would encourage landlords to increase the total amount of fees that may be charged to a tenant for late payment of rent. By doing away with the requirement that a landlord's late fee be in the amount of a "reasonable estimate" of losses incurred from late payment, the bill would remove the only incentive for landlords to keep late payment fees low, disproportionately harming low-income renters.

The bill would damage tenant rights by removing a cause for action under which tenants currently may sue for excessive late rent fees. By removing the "reasonable estimate" requirement, the bill would remove recourse for a tenant who was being charged an unreasonably high late fee.

OTHER
OPPONENTS
SAY:

CSHB 1821 unnecessarily would constrain the free market by capping the total amount of late fees landlords could charge. The market, not government, should govern contracts between landlords and tenants. Renters have a responsibility to understand their contractual obligations and should exercise judgment when renting property from a landlord who charges a late fee.

NOTES:

A companion bill, SB 921 by Perry, was left pending following an April 20 public hearing in the Senate Committee on Business and Commerce.