

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1783
By: Creighton
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Often, the most significant housing barrier faced by potential tenants is advance payment of first and last months' rent, plus a security/damage deposit. Millions of Texans' deposits sit unusable in their landlords' bank accounts—dollars which are desperately needed, especially during a pandemic.

A 2018 study found that security deposits intensify the housing affordability crisis and are extremely burdensome on those earning lower incomes.

S.B. 1783 would codify the current practice of utilizing a small monthly "deposit waiver fee" instead of a large down payment upon move-in. This will encourage landlords to use lease insurance and offer zero-deposit rentals, which will help thousands of Texans.

Lease insurance reimburses landlords for damages and unpaid rent. When tenants pay this small monthly deposit waiver fee to help landlords pay the insurance premium, landlords can eliminate security/damage deposits and tenants can save thousands of dollars on move-in day.

This current practice is already popular, although Texas law is silent on the issue. Ninety-two percent of tenants who are offered the option choose to pay a monthly fee in lieu of a large deposit. Explicit government approval would encourage more landlords to offer this option, which would provide greater access to affordable housing for thousands of Texans.

As proposed, S.B. 1783 amends current law relating to a fee collected by a landlord in lieu of a security deposit.

(Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1783 amends current law relating to a fee collected by a landlord in lieu of a security deposit.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 92, Property Code, by adding Section 92.111, as follows:

Sec. 92.111. FEE IN LIEU OF SECURITY DEPOSIT. (a) Authorizes a landlord, if a security deposit is required by a residential lease, to choose to offer the tenant an option to pay a fee in lieu of a security deposit. Provides that if a landlord offers a tenant the option of paying a fee in lieu of a security deposit, the landlord:

(1) is required to offer the tenant the option to instead pay a security deposit; and

(2) is prohibited from using a prospective tenant's choice to pay a fee in lieu of a security deposit or a security deposit as a criterion in the determination of whether to approve an application for occupancy.

(b) Requires the landlord, at the time a landlord offers to a tenant the option of paying a fee in lieu of a security deposit, to notify the tenant in writing:

(1) that the tenant has the option to instead pay a security deposit;

(2) that the tenant has the option to terminate the agreement to pay the fee in lieu of a security deposit at any time and stop paying the fee, and instead, to pay a security deposit in the amount that is otherwise offered to new tenants for substantially similar housing on the date the tenant chooses to pay the security deposit; and

(3) of the charges for each option described by Subdivision (1) or (2).

(c) Requires that an agreement to collect the fee, if the tenant decides to pay a fee in lieu of a security deposit, be in writing and signed by the landlord or the landlord's legal representative and the tenant.

(d) Requires that a fee in lieu of a security deposit be a recurring fee of equivalent amount and payable at the time each rent payment is due during the lease.

(e) Authorizes a fee collected under this section to be used to purchase insurance coverage for damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease. Prohibits a landlord from charging the tenant a fee that is more than the reasonable cost of obtaining and administering the insurance purchased under this subsection.

(f) Requires that an agreement required under Subsection (c), if the tenant decides to pay a fee in lieu of a security deposit and the landlord purchases insurance coverage as described by Subsection (e), clearly specify the following terms:

(1) the fee is being paid only to secure occupancy without a requirement of paying a security deposit;

(2) the fee, unless otherwise specified, is not refundable;

(3) payment of the fee, unless otherwise specified, does not eliminate, release, or otherwise limit the requirements of the lease, including that the tenant is required to pay for rent as the rent becomes due and damages for which the tenant is legally liable under the lease, other than normal wear and tear; and

(4) the fee, unless otherwise specified, is not paying for insurance that covers the tenant or otherwise changes the tenant's obligation to pay rent and damages beyond normal wear and tear.

(g) Provides that except as provided by Subsection (h), a fee collected under this section is a security deposit for purposes of Chapter 92 (Residential Tenancies).

(h) Provides that a fee collected under this section is not a security deposit for purposes of Chapter 92 if:

(1) an agreement was signed under Subsection (c); and

(2) the fee is used to purchase insurance coverage for damages and unpaid rent for which the tenant is legally liable under the lease or as a result of breaching the lease.

(i) Prohibits a landlord from charging a tenant for normal wear and tear of a dwelling.

(j) Prohibits a landlord from submitting a claim for damages or unpaid rent to an insurer for insurance described by Subsection (e) unless the landlord notifies the tenant of the damages or unpaid rent indebtedness not later than the 30th day after the date the tenant surrendered possession of the dwelling. Requires that the notice include a written description and itemized list of all damages, if any, and of unpaid rent, if any, including the dates the rent payments were due.

(k) Provides that if the tenant challenges the claim for damages or unpaid rent and that challenge results in a determination by the landlord or by a court that the notice of indebtedness is incorrect, the indebtedness is void and the landlord is prohibited from filing an insurance claim for insurance purchased under Subsection (e) in the amount of the voided indebtedness. Requires that the claim, if the landlord has already submitted to the insurer a claim for the voided indebtedness, be withdrawn. Requires the landlord, if the insurance company has already paid the landlord for the invalidated claim, to return the payment.

(l) Provides that if an insurer compensates a landlord for a tenant's damages or unpaid rent under a valid claim:

(1) the landlord is prohibited from seeking or collecting reimbursement from the tenant of the amounts that the insurer paid to the landlord;

(2) the insurer that has paid a landlord after receipt of a claim filed by a landlord, if allowed by a subrogation clause in the insurance described by Subsection (e) and before the first anniversary of the termination of the tenant's occupancy, is authorized to seek reimbursement from the tenant of only the amounts paid to the landlord; and

(3) the tenant is entitled to any defenses to payment against the insurer as against the landlord.

(m) Requires an insurer, if the insurer seeks reimbursement under Subsection (l)(2), to include in the reimbursement demand:

(1) evidence of damages or unpaid rent that the landlord submitted to the insurer;

(2) evidence of damage repair costs that the landlord submitted to the insurer; and

(3) a copy of the settled claim that documents payments made by the insurer to the landlord.

SECTION 2. Makes application of Section 92.111, Property Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2021.