

BILL ANALYSIS

C.S.H.B. 3541
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that state law does not explicitly address the options available to landlords and tenants to secure against damages or unpaid rent beyond the traditional security deposit. C.S.H.B. 3541 seeks to set out the legal alternative to these security deposits in statute for a landlord to provide the option for a tenant to pay a recurring fee with their rental payment in lieu of paying a security deposit, the revenue from which can be used to purchase lease insurance to protect the covered property.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3541 amends the Property Code to establish a landlord's option to offer a tenant whose residential lease requires a security deposit the option to pay a fee in lieu of the security deposit. If a landlord offers this option, the landlord must offer the tenant the option to instead pay a security deposit and may not use a prospective tenant's choice to pay the fee or a security deposit as a criterion in the determination of whether to approve an application for occupancy. At the time the landlord offers to a tenant the option of paying the fee, the landlord must notify the tenant of the following in writing:

- that the tenant has the option to instead pay a security deposit;
- that the tenant has the option to terminate the agreement to pay a fee 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
- the charges for each option.

C.S.H.B. 3541 establishes that, if the tenant decides to pay a fee in lieu of a security deposit, an agreement to collect the fee must be in writing and signed by the landlord or their legal representative and the tenant. The bill authorizes the fee 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. If the tenant decided to pay a fee in lieu of a security deposit and the landlord purchases that insurance coverage, the agreement must specify the following terms:

- the fee is being paid only to secure occupancy without a requirement of paying a security deposit;
- the fee, unless otherwise specified, is not refundable;

- payment of the fee, unless otherwise specified, does not eliminate, release, or otherwise limit the requirements of the lease, including that the tenant must 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
- 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.

The bill requires the fee to be a recurring fee of equivalent amount and payable at the time each rent payment is due during the lease and prohibits the landlord from charging the tenant a fee that is more than the reasonable cost of obtaining and administering the lease insurance purchased. The bill clarifies that the fee is considered a security deposit unless an agreement was signed and the fee is used to purchase that lease insurance, in which case it is not.

C.S.H.B. 3541 prohibits a landlord from charging a tenant for normal wear and tear of a dwelling. The bill prohibits a landlord from submitting a claim for damages or unpaid rent to an insurer 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. The notice must 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.

C.S.H.B. 3541 establishes that a tenant challenge to a claim for damages or unpaid rent that results in a determination by the landlord or by a court that the notice of indebtedness is incorrect voids the indebtedness and the landlord may not file an insurance claim in the amount of the voided indebtedness. The bill requires any claim that the landlord has already submitted to the insurer for the voided indebtedness to be withdrawn and requires the landlord to return any payment already made by the insurance company for the invalidated claim.

C.S.H.B. 3541 provides the following with respect to a circumstance in which an insurer compensates a landlord for a tenant's damages or unpaid rent under a valid claim:

- the landlord may not seek or collect reimbursement from the tenant of the amounts that the insurer paid to the landlord;
- the insurer that has paid a landlord after receipt of a claim filed by a landlord, if allowed by a subrogation clause in the lease insurance and before the first anniversary of the termination of the tenant's occupancy, may seek reimbursement from the tenant of only the amounts paid to the landlord; and
- the tenant is entitled to any defenses to payment against the insurer as against the landlord.

The bill sets out the evidence and documentation an insurer seeking such reimbursement must include in the reimbursement demand.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3541 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions not included in the original applicable to a landlord offering a tenant the option to pay a fee in lieu of a security deposit:

- a requirement to offer the tenant the option to pay a security deposit;

- a prohibition against the landlord using a prospective tenant's choice to pay a fee or pay a security deposit as a criterion in the determination of whether to approve the tenant's application for occupancy; and
- a requirement for the landlord to provide a certain written notice to the tenant at the time the landlord offers a tenant the option.

The original provided that the fee may be either a recurring monthly fee or payable upon any schedule and in any amount that the landlord and tenant choose. The substitute instead requires the fee to be a recurring fee of equivalent amount and payable at the time each rent payment is due. The substitute also includes a provision not in the original prohibiting the landlord from charging a fee that is more than the reasonable cost of obtaining and administering a lease insurance policy as provided under the bill's provisions.

The substitute includes provisions not in the original establishing the terms required to be included in an agreement between a tenant and a landlord to collect the fee in lieu of a security deposit if the landlord purchases lease insurance with the fee.

The original had a uniformly applicable provision establishing that a fee collected is not a security deposit, whereas the substitute does not. Instead, the substitute requires that an agreement was signed between the tenant and landlord and that the landlord used the fee to purchase the lease insurance policy in order for the fee to not be considered a security deposit.

The substitute includes a provision not in the original prohibiting a landlord from charging a tenant for normal wear and tear of a dwelling.

The substitute includes provisions not in the original regarding a claim submitted by a landlord for damages or unpaid rent under their lease insurance policy and procedures and regulations related to the claim.