

# SENATE . . . . . No. 2846

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Senate, June 27, 2024 -- Text of amendment (2) (offered by Senator Tarr) to the Ways and Means amendment (Senate, No. 2834) to the Senate Bill relative to the Affordable Housing Act

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## The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court  
(2023-2024)

1 by adding the following section:-

2 "SECTION XX. Section 15B of chapter 186 of the General Laws, as appearing in the  
3 2018 Official Edition, is hereby amended in subsection (b) of subsection (1) by inserting after the  
4 words "subsection (2)" in line 25 the following:-

5 provided however, in lieu of requiring payment of a security deposit a lessor may choose  
6 to collect and a tenant may choose to pay a fee in lieu of security deposit, the payment of which  
7 satisfies the lessor's security deposit requirement and the tenant's security deposit obligation.

8 The fee in lieu of security deposit:

9 (a) may be entirely or partially non-refundable, so long as this is disclosed in the lease  
10 and separately acknowledged by the tenant;

11 (b) must be utilized by the lessor to purchase insurance coverage for unpaid rent or unit  
12 damage, provided that a lessor may not charge a fee that is more than the reasonable cost of  
13 obtaining and administering such insurance;

14 (c) may be a recurring monthly fee, or payable upon any schedule and in any amount that  
15 the lessor and tenant choose; and

16 (d) shall not be considered by a court, arbitrator, mediator or any other dispute resolution  
17 adjudicator to be a security deposit or governed by state or local codes governing security  
18 deposits.

19 If a lessor chooses to waive a security deposit requirement and a tenant agrees instead to  
20 pay a fee in lieu of a security deposit, the lessor shall:

21 (a) ensure that the fee in lieu of a security deposit is strictly optional for the tenant, and  
22 the tenant can choose to pay a full security deposit rather than a fee in lieu of a security deposit;

23 (b) not use a prospective tenant's choice to pay a fee in lieu of a security deposit or a  
24 traditional security deposit as a criterion in the determination of whether to approve an  
25 application for occupancy;

26 (c) if it chooses to offer the fee in lieu of a security deposit option, offer it to every  
27 prospective tenant whose application for occupancy has been approved, without further regard to  
28 income, race, gender, disability, sexual orientation, immigration status, size of household, or  
29 credit score following such approval,

30 (d) not charge tenant for normal wear and tear;

31 (e) allow any tenant that agrees to pay a fee in lieu of a security deposit, to opt-out of the  
32 continuing fee in lieu of a security deposit obligation upon full payment of the security deposit  
33 that is otherwise in effect for the tenant's apartment on the day of the opt-out.

34           Should the tenant choose to pay a fee in lieu of a security deposit, an agreement to collect  
35 the fee must be in writing and signed by both the lessor or the lessor's legal representative,  
36 disclosing:

37           (a) that the fee is only to waive the required security deposit upon move-in;

38           (b) if the fee is nonrefundable;

39           (c) that the fee does not eliminate any lease obligations, including rent and tenant liability  
40 for damages beyond wear and tear;

41           (d) it does not provide insurance or any coverage for the tenant.

42           (e) The terms of any insurance coverage purchased by the lessor for lessor's losses  
43 associated with any unpaid amounts due from the tenant to the lessor pursuant to the lease,  
44 including but not limited to rent, fees, or unit damage in excess of wear resulting from ordinary  
45 use of the premises, and including the amount of exclusions or caps, if any, on coverage of any  
46 amounts due from the tenant to the lessor pursuant to the lease;

47           (f) If the insurance provider requires the lessor to first attempt reimbursement from the  
48 tenant before filing a claim, that payment of the fee in lieu of a security deposit does not preclude  
49 the insurer or the lessor from proceeding against the tenant to recover any unpaid amounts due to  
50 the lessor pursuant to the lease and unpaid costs to repair damage to the property for which the  
51 tenant is responsible pursuant to the lease but never to include any sums for wear resulting from  
52 ordinary use of the premises, together with reasonable attorneys' fees.

53           (g) Such disclosures to the tenant must be in substantially the following form:

54           **YOU MAY PAY A MONTHLY FEE INSTEAD OF A SECURITY DEPOSIT.**

55 This fee is not a security deposit and will not be refunded when you move. By paying this  
56 fee the lessor is permitting you to move into the housing unit without paying a security deposit.  
57 If you do not make all payments or you damage the premises beyond wear resulting from its  
58 ordinary use, you may be required by the lessor, an insurance company, or a debt collector to pay  
59 the unpaid amounts, including costs of repairing the damages in excess of wear resulting from  
60 ordinary use of the premises.

61 Massachusetts law may allow you two different options: (1) Paying the full security  
62 deposit upon signing the lease. (2) If offered by your lessor, paying a monthly fee in lieu of  
63 security deposit instead of a security deposit. If you choose this option, you will not pay a  
64 security deposit. Your recurring monthly charge will be \$ \_\_\_\_ IN ADDITION to your monthly  
65 rent payment, instead of a security deposit in the amount of \$ \_\_\_\_.

66 IF YOU CHOOSE TO PAY A MONTHLY FEE IN LIEU OF SECURITY DEPOSIT,  
67 HERE IS THE AMOUNT YOU WILL PAY OVER THE LEASE TERM COMPARED TO  
68 THE ONE-TIME DEPOSIT PAYMENT:

69 Monthly Nonrefundable Fee in Lieu of Security Deposit:

70 Total cost of monthly fees over lease term:

71 One-time Refundable Security Deposit:

72 In the event your tenancy terminates and you have not paid rent or other amounts due  
73 pursuant to the lease, and you have not paid to repair damages beyond wear resulting from  
74 ordinary use of the premises, insurance coverage will pay your lessor up to: \$ \_\_\_\_\_ for any  
75 unpaid rent and fees, and \$ \_\_\_\_\_ for any damages.

76 Total coverage: \$ \_\_\_\_\_

77 IMPORTANT: IF YOU CHOOSE TO PAY A RECURRING MONTHLY FEE

78 INSTEAD OF A SECURITY DEPOSIT:

79 (1) YOU ARE NOT AN INSURED PARTY UNDER THE INSURANCE POLICY 25  
80 PURCHASED BY THE LESSOR USING YOUR FEES;

81 (2) YOU ARE NOT A BENEFICIARY TO ANY INSURANCE COVERAGE OR ANY  
82 INSURANCE BENEFITS UNDER THE INSURANCE POLICY THAT THE LESSOR  
83 PURCHASES USING YOUR FEES; AND

84 (3) YOU ARE STILL OBLIGATED TO PAY RENT AND ALL PAYMENTS  
85 REQUIRED 30 BY THE LEASE, INCLUDING COSTS TO REPAIR DAMAGES BEYOND  
86 WEAR 31 RESULTING FROM ORDINARY USE OF THE PREMISES.

87 The lessor may seek payment from you before filing any claims with the insurance  
88 provider. If you fail to pay the lessor for unpaid rent or other unpaid payments or the costs to  
89 repair damages beyond wear resulting from ordinary use of the premises, and an insurer pays the  
90 lessor instead, then the insurer may seek reimbursement from you of its payments to the lessor.

91 If you choose to pay a recurring monthly fee instead of a security deposit, then you are  
92 permitted at any time to pay the lessor a security deposit in the amount of \$ \_\_\_\_\_ and stop  
93 paying the recurring fee beginning in the month following payment of the security deposit.

94 (h) The lessor shall provide the disclosure form to the tenant with any lease and renewal  
95 that includes the option to pay a fee instead of a security deposit.

96 (i) A fee in lieu of a security deposit does not constitute rent and failure to pay may  
97 not constitute a cause for eviction provided that nothing in this section shall preclude the lessor  
98 from proceeding in a civil action against, and the lessor shall have the right to proceed against, a  
99 tenant to recover unpaid fees

100 (j) In the event the lessor fails to purchase or maintain the insurance as required by this  
101 subsection, and if the tenant pays the monthly fee as agreed, the lessor shall credit the total  
102 insurance coverage stated in the disclosure to any indebtedness owed by the tenant upon the  
103 tenant vacating the unit.

104 However, if through no fault of the lessor, the insurer is suddenly unable to do business in  
105 Massachusetts or is otherwise incapable of fulfilling its obligation, the lessor is not required to  
106 credit the insurance coverage stated in the disclosure to any indebtedness owed by the tenant  
107 upon the tenant vacating the unit. If the landlord fails to secure Additional coverage after 60  
108 days, the landlord may no longer charge a fee in lieu of security deposit and is not required to  
109 credit the insurance coverage stated in the disclosure to any indebtedness owed by the tenant  
110 upon the tenant vacating the unit; and may not charge the tenant a security deposit during the  
111 lease term.

112 k) If at the end of the lease term, a landlord and tenant wish to renew a lease but  
113 The landlord decides to discontinue providing the option of paying a fee in lieu of a  
114 Security deposit, the landlord shall: provide 60 days notice to the tenant prior to end of  
115 the lease term; and reduce the security deposit required on the renewed lease by the amount of

116 A tenant's previous fee payments in lieu of the security deposit.

117 l) Lessor must notify a tenant upon termination of the lease of any damages and unpaid  
118 rent charges at least 30 days before submitting said charges to the insurer, and notice must  
119 include a written description and itemized list of all damages and unpaid rent.

120 Should the lessor or court find that a tenant is not liable for a charge, the lessor is  
121 prohibited from submitting to insurer, or pre-judgement submissions to insurer must be  
122 withdrawn.

123 If an insurer compensates a lessor for a valid claim associated with the lessor's losses  
124 pursuant to the lease, including but not limited to rent, fees, or unit damage in excess of wear  
125 resulting from ordinary use of the premises:

126 a) The lessor may not seek reimbursement of the amounts from the tenant that the insurer  
127 paid to the lessor;

128 b) In the event the insurer has subrogation rights, the insurer may seek reimbursement  
129 from the tenant but only for the amounts paid to the lessor that were owed by the tenant to the  
130 lessor pursuant to the lease, and in no circumstances for amounts, if any, paid to the lessor for  
131 repair of wear resulting from ordinary use of the premises; and

132 c) The tenant is entitled to any defenses to payment against the insurer as against the  
133 lessor

134 If the insurer or any other collector seeks reimbursement from the tenant pursuant to any  
135 subrogation rights available to the insurer, with any request for reimbursement, the party must  
136 provide the tenant by first-class mail, and email if available, at the last known address as  
137 provided by the lessor:

- 138 (a) evidence of damages or unpaid rent that the lessor submitted to the insurer;
- 139 (b) evidence of damage repair costs that the lessor submitted to the insurer; and
- 140 (c) a copy of the settled claim that documents payments made by the insurer to the lessor.

141 A tenant is entitled to any defenses to payment against the insurer as against the lessor;

- 142 (d) Information about how to contact the insurer or collector seeking reimbursement to
- 143 dispute any claim

144 If the tenant fails to pay a request by an insurer or collector for reimbursement under this

145 subsection, the party seeking reimbursement may not commence collection activities against the

146 tenant less than 60 days after sending a request for reimbursement and providing documentation

147 as required under this subsection. However, if the tenant has disputed the claim, the party

148 seeking reimbursement shall defer any collection activities for an additional 60 days to resolve

149 the dispute.

150 The lessor may not send an invoice to a tenant or undertake collection activity against the

151 tenant for any amounts after submitting a claim to the insurer if:

- 152 (a) The insurer approved the claim;
- 153 (b) The insurer denied the claim because it is not a loss pursuant to the lease; or
- 154 (c) The insurer denied the claim because the lessor submitted insufficient documentation
- 155 or proof to substantiate the claim.
- 156 (d) the lessor may invoice the tenant and undertake collection activity against a tenant for
- 157 lessor's losses if the insurer denies the claim because the loss is not covered pursuant to the



158 insurance agreement, including if the value of the loss exceeded the insurance coverage loss  
159 limit.

160 Where the tenant has opted into paying a fee in lieu of a security deposit, the lessor shall  
161 not undertake collection activities against the tenant unless 60 days have passed after the lessor  
162 has submitted a claim to the insurer. However, nothing in this subsection shall be construed to  
163 prohibit the lessor from sending an invoice to the tenant before submitting a claim to the insurer.

164 (a) However, the 60-day waiting period shall not apply where the tenant opts out of, or  
165 the lessor discontinues providing the option of, paying a continuing fee in lieu of a security  
166 deposit during the tenancy and the tenant provides full payment of a security deposit prior to the  
167 termination of the rental agreement or the tenant's abandonment of the premises.

168 A lessor found in material violation of this act shall be held liable to the tenant in a civil  
169 action up to two times the monthly rent of the real property unit at issue, as well as court or  
170 arbitration costs and reasonable attorneys' fees"