

By Senator DiCeglie

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1                                   A bill to be entitled  
2       An act relating to fees in lieu of security deposits;  
3       creating s. 83.491, F.S.; authorizing a landlord to  
4       offer a tenant the option to pay a fee in lieu of a  
5       security deposit; requiring the landlord to notify the  
6       tenant of certain unpaid fees and costs within a  
7       specified time after the conclusion of the tenancy;  
8       prohibiting the landlord from filing an insurance  
9       claim within a specified period of time; providing  
10      requirements for the landlord and insurer if an  
11      insurance claim to recover certain losses is filed;  
12      prohibiting the landlord from accepting certain  
13      payments; requiring the landlord to provide certain  
14      written notice to the tenant; requiring a written  
15      agreement signed by the landlord, or the landlord's  
16      agent, and the tenant if the tenant decides to pay a  
17      fee in lieu of the security deposit; prohibiting the  
18      written agreement from contradicting specified laws;  
19      requiring that the written agreement contain certain  
20      information; requiring a specified disclosure in the  
21      written agreement; providing options for paying the  
22      fee; specifying that certain fees, insurance products,  
23      and surety bonds are not security deposits; specifying  
24      that landlords have exclusive discretion as to whether  
25      to offer tenants the option to pay a fee in lieu of a  
26      security deposit; prohibiting a landlord from  
27      approving or denying an application for occupancy  
28      based on a prospective tenant's choice to pay a fee in  
29      lieu of a security deposit; requiring that landlords

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30 that offer a tenant the fee option offer it to all new  
31 tenants renting a dwelling unit on the same premises;  
32 providing an exception; providing construction;  
33 providing applicability; providing an effective date.  
34

35 Be It Enacted by the Legislature of the State of Florida:  
36

37 Section 1. Section 83.491, Florida Statutes, is created to  
38 read:

39 83.491 Fee in lieu of security deposit.—

40 (1) If a rental agreement requires a security deposit, a  
41 landlord may offer a tenant the option to pay a fee in lieu of a  
42 security deposit.

43 (2) (a) If a tenant agrees to pay a fee in lieu of a  
44 security deposit, the landlord must notify the tenant within 30  
45 days after the conclusion of the tenancy if there are any costs  
46 or fees due resulting from unpaid rent, fees, or other  
47 obligations under the rental agreement, including, but not  
48 limited to, costs required for repairing damage to the premises  
49 beyond normal wear and tear.

50 (b) A landlord may not submit a claim to an insurer to  
51 recover the landlord's losses associated with unpaid rent, fees,  
52 or other obligations under the rental agreement, including, but  
53 not limited to, costs required for repairing damage to the  
54 premises beyond normal wear and tear, until at least 15 days  
55 after providing the tenant with the required notice under  
56 paragraph (a).

57 1. The landlord must include an itemized list of any unpaid  
58 amounts and the dates such amounts were due, documentation

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59 supporting any itemized damages and costs of repairs, and a copy  
60 of any written objection or report of any communication of  
61 objection by the tenant when the landlord submits a claim to an  
62 insurer.

63 2. If an insurer pays a claim that was submitted under this  
64 subsection to a landlord and the insurer has subrogation rights,  
65 the insurer may, within 1 year after the tenancy that was the  
66 subject of the claim ends, seek reimbursement from the tenant  
67 for the amounts paid to the landlord. If the insurer seeks  
68 reimbursement from the tenant, the following apply:

69 a. The insurer must provide the tenant with all  
70 documentation for losses which the landlord provided to the  
71 insurer in support of the landlord's claim and a copy of the  
72 settlement statement documenting the insurer's payment of the  
73 landlord's claim.

74 b. The tenant retains any defenses against the insurer  
75 which the insurer would otherwise have against the landlord.

76 3. A landlord may not accept payment from both a tenant and  
77 an insurer for amounts associated with the same rent, fees, or  
78 damages.

79 (3) If a landlord offers a tenant the option to pay a fee  
80 in lieu of a security deposit, the landlord must notify the  
81 tenant in writing of all of the following:

82 (a) That the tenant has the option to pay a security  
83 deposit instead of the fee.

84 (b) That the tenant may, at any time, terminate the  
85 agreement to pay the fee in lieu of the security deposit and  
86 instead pay a security deposit as listed in a rental agreement  
87 between landlord and tenant or, if a security deposit was not

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88 agreed upon in a rental agreement between the landlord and  
89 tenant, in the amount that is otherwise offered to new tenants  
90 for a substantially similar dwelling unit on the date that the  
91 tenant terminates the agreement.

92 (c) Whether any additional charges apply for the options  
93 provided in paragraphs (a) and (b).

94 (d) The amount of the payments required for each option the  
95 landlord offers.

96 (e) That the fee is nonrefundable, if applicable.

97 (f) That the fee is only for securing occupancy without  
98 paying a required security deposit.

99 (g) That the fee payment does not limit or change the  
100 tenant's obligation to pay rent and fees, if any, under the  
101 rental agreement or limit or change the tenant's obligation to  
102 pay the costs of repairing damage to the premises beyond normal  
103 wear and tear.

104 (h) That if the landlord uses any portion of the fee to  
105 purchase insurance, the tenant is not insured and is not a  
106 beneficiary of the landlord's insurance coverage, and that the  
107 insurance does not limit or change the tenant's obligations to  
108 pay rent and fees under the rental agreement or change the  
109 tenant's obligation to pay the costs of repairing damage to the  
110 premises beyond normal wear and tear.

111 (4) (a) If a tenant decides to pay a fee in lieu of a  
112 security deposit, a written agreement to collect the fee must be  
113 signed by the landlord, or the landlord's agent, and the tenant.  
114 The written agreement may not contain any clause that  
115 contradicts s. 83.45 or s. 83.47. The written agreement must, at  
116 a minimum, specify all of the following:

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- 117       1. The amount of the fee.
- 118       2. How and when the fee is to be collected.
- 119       3. The process and timeframe during which a tenant must pay  
 120 the security deposit specified in the rental agreement if the  
 121 tenant defaults on paying the fee, and that such default will  
 122 not adversely affect the tenant's credit rating if the security  
 123 deposit is timely paid.
- 124       4. That the written agreement may be terminated at any time  
 125 as long as the tenant pays the amount of the security deposit  
 126 specified in the rental agreement.
- 127       5. If the tenant pays the amount of the security deposit  
 128 specified in the rental agreement, then the tenant's default on  
 129 paying the fee or termination of the written agreement may not  
 130 adversely impact the tenant's credit report.
- 131       (b) The written agreement specified under paragraph (a)  
 132 must also include a disclosure in substantially the following  
 133 form:

FEE IN LIEU OF SECURITY DEPOSIT

137       THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY  
 138 BOTH PARTIES, AND THE TENANT AGREES TO PAY THE  
 139 LANDLORD A FEE IN LIEU OF A SECURITY DEPOSIT AS  
 140 AUTHORIZED UNDER SECTION 83.491, FLORIDA STATUTES.  
 141 THIS FEE IS NOT A SECURITY DEPOSIT, AND PAYMENT OF THE  
 142 FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS  
 143 UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION  
 144 TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND  
 145 DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT

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146 OR HIS OR HER GUESTS MAY CAUSE. IF THE LANDLORD USES  
147 ANY PORTION OF THE TENANT'S FEE TO PURCHASE INSURANCE,  
148 THE TENANT IS NOT INSURED AND IS NOT A BENEFICIARY OF  
149 SUCH COVERAGE. SUCH INSURANCE DOES NOT LIMIT OR CHANGE  
150 THE TENANT'S OBLIGATION TO PAY RENT AND FEES, IF ANY,  
151 UNDER THE RENTAL AGREEMENT OR TO PAY THE COSTS AND  
152 DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT  
153 OR HIS OR HER GUESTS MAY CAUSE. THE TENANT MAY  
154 TERMINATE THIS AGREEMENT AT ANY TIME AND STOP PAYING  
155 THE FEE AND INSTEAD PAY A SECURITY DEPOSIT AS PROVIDED  
156 IN SECTION 83.491, FLORIDA STATUTES.

157  
158 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF  
159 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL  
160 RIGHTS AND OBLIGATIONS.

161  
162 (5) A fee in lieu of a security deposit may be:

163 (a) A recurring monthly fee, payable on the same date that  
164 the rent payment is due under the rental agreement; or

165 (b) Payable upon a schedule that the landlord and tenant  
166 choose and as specified in the written agreement.

167 (6) A fee collected under this section, or an insurance  
168 product or a surety bond accepted, by a landlord in lieu of a  
169 security deposit is not a security deposit as defined in s.  
170 83.43(12).

171 (7) A landlord has exclusive discretion as to whether to  
172 offer tenants the option to pay a fee in lieu of a security  
173 deposit and is not required to offer such fee option to tenants.  
174 However, if a landlord offers a tenant an option to pay a fee in

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175 lieu of a security deposit, the landlord may not use a  
176 prospective tenant's choice to pay, or offer to pay, a fee in  
177 lieu of a security deposit as criteria in the determination to  
178 approve or deny an application for occupancy, and the landlord  
179 must also offer all new tenants renting a dwelling unit on the  
180 same premises the option to pay a fee in lieu of a security  
181 deposit, unless the landlord chooses to prospectively terminate  
182 the fee option for all new rental agreements.

183 (8) (a) This section does not:

184 1. Require a fee collected in lieu of a security deposit to  
185 be used to purchase an insurance product or a surety bond; or

186 2. Prohibit a tenant from being offered or sold an  
187 insurance product or a surety bond to present to the landlord in  
188 lieu of a security deposit if the offer or sale of such  
189 insurance product or surety bond complies with the laws of this  
190 state.

191 (b) Acceptance by a landlord of an insurance product or a  
192 surety bond that is purchased or procured by a tenant, a  
193 landlord, or an agent of the landlord may not be considered an  
194 offer on the part of the landlord to allow a tenant to pay a fee  
195 in lieu of a security deposit for the purposes of subsection  
196 (7).

197 (9) This section applies to rental agreements entered into  
198 or renewed on or after July 1, 2023.

199 Section 2. This act shall take effect July 1, 2023.