

## 1 HOUSE BILL NO. 550

2 INTRODUCED BY J. GURSKY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROTECTIONS FOR TENANTS WHO ARE VICTIMS  
5 OF DOMESTIC OR SEXUAL VIOLENCE, INCLUDING STALKING; PROVIDING AN AFFIRMATIVE DEFENSE  
6 FOR EARLY TERMINATION OF A RENTAL AGREEMENT; PROVIDING REQUIREMENTS FOR CHANGE OF  
7 LOCKS; PROVIDING PROTECTION FROM RETALIATION AGAINST A VICTIM OF DOMESTIC OR SEXUAL  
8 VIOLENCE; PROVIDING PROTECTION FROM DISCLOSURE OF A TENANT'S CIRCUMSTANCES; AND  
9 AMENDING SECTIONS 70-24-103, 70-24-322, 70-24-426, AND 70-24-430, MCA."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 70-24-103, MCA, is amended to read:  
14 **"70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and  
15 unless the context otherwise requires, in this chapter the following definitions apply:

16 (1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which  
17 rights are determined, including an action for possession.

18 (2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring  
19 immediate action to protect the premises or the tenant. A case of emergency may include the interruption of  
20 essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service,  
21 or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to  
22 the tenant or others.

23 (3) "Court" means the appropriate district court, justice's court, or city court.

24 (4) "Domestic or sexual violence" includes the offense of partner or family member assault, sexual  
25 assault, sexual intercourse without consent, sexual abuse of children, and stalking, as provided in Title 45,  
26 chapter 5.

27 ~~(4)~~(5) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or  
28 sleeping place by a person who maintains a household or by two or more persons who maintain a common  
29 household. Dwelling unit, in the case of a person who rents space in a mobile home park and rents the mobile  
30 home, means the mobile home itself.

- 1           ~~(5)~~(6) "Good faith" means honesty in fact in the conduct of the transaction concerned.
- 2           ~~(6)~~(7) "Landlord" means:
- 3           (a) the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part; or
- 4           (b) a manager of the premises who fails to disclose the managerial position.
- 5           ~~(7)~~(8) "Organization" includes a corporation, government, governmental subdivision or agency, business
- 6 trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any
- 7 other legal or commercial entity.
- 8           ~~(8)~~(9) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:
- 9           (a) the legal title to property; or
- 10           (b) the beneficial ownership and a right to present use and enjoyment of the premises, including a
- 11 mortgagee in possession.
- 12           ~~(9)~~(10) "Person" includes an individual or organization.
- 13           ~~(10)~~(11) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and
- 14 appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally
- 15 or promised for the use of a tenant.
- 16           ~~(11)~~(12) "Rent" means all payments to be made to the landlord under the rental agreement.
- 17           ~~(12)~~(13) "Rental agreement" means all agreements, written or oral, and valid rules adopted under
- 18 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and
- 19 premises.
- 20           ~~(13)~~(14) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or
- 21 a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of
- 22 which are used in common by occupants in the structure.
- 23           ~~(14)~~(15) "Single-family residence" means a structure maintained and used as a single dwelling unit. A
- 24 dwelling unit that shares one or more walls with another dwelling unit is a single-family residence if it has direct
- 25 access to a street or thoroughfare and does not share heating facilities, hot water equipment, or any other
- 26 essential facility or service with another dwelling unit.
- 27           ~~(15)~~(16) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the
- 28 exclusion of others."

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30           **Section 2.** Section 70-24-322, MCA, is amended to read:

1           **"70-24-322. Tenant to occupy as dwelling unit only -- extended absence.** (1) Unless otherwise  
2 agreed, a tenant shall occupy the tenant's dwelling unit only as a dwelling unit.

3           (2) The rental agreement may require that the tenant notify the landlord of an anticipated extended  
4 absence from the premises in excess of 7 days no later than the first day of the extended absence except as  
5 provided in [sections 5 through 11]."

6

7           **Section 3.** Section 70-24-426, MCA, is amended to read:

8           **"70-24-426. Remedies for absence or abandonment.** (1) If the rental agreement requires the tenant  
9 to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in  
10 70-24-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant unless the  
11 provisions of [sections 5 through 11] apply.

12           (2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times  
13 reasonably necessary.

14           (3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair  
15 rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement,  
16 the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent  
17 the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement  
18 is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from  
19 month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the  
20 case may be.

21           (4) A person convicted of an offense constituting domestic or sexual violence who is a tenant and is  
22 excluded from a dwelling unit under a court order remains liable under the lease with other tenants of the dwelling  
23 unit for rent and for the cost of damages to the dwelling unit."

24

25           **Section 4.** Section 70-24-430, MCA, is amended to read:

26           **"70-24-430. Disposition of personal property abandoned by tenant after termination.** (1) If When  
27 a tenancy terminates in any manner except by court order or in the circumstances provided in [sections 5 through  
28 11], and if the landlord reasonably believes that the tenant has abandoned all personal property that the tenant  
29 has left on the premises and a period of time of at least 5 days has elapsed since the occurrence of events upon  
30 which the landlord formed that belief, the landlord may remove the property from the premises.

1           (2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a  
2 place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable  
3 storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the  
4 place of storage. The landlord may store the property in a commercial storage company, in which case the  
5 storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

6           (3) After complying with subsections (1) and (2), the landlord shall:

7           (a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the  
8 place of safekeeping;

9           (b) notify the local law enforcement office of the property held by the landlord;

10          (c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

11          (d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time,  
12 not less than 15 days after mailing the notice, the property will be disposed of if not removed.

13          (4) The landlord may dispose of the property after complying with subsection (3) by:

14          (a) selling all or part of the property at a public or private sale; or

15          (b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that  
16 the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

17          (5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord  
18 on or before the day specified in the notice that the tenant intends to remove the property and does not do so  
19 within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be  
20 abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the  
21 property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable  
22 storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who  
23 stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs  
24 allowed under this subsection before the tenant may remove the property.

25          (6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is  
26 caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable  
27 for actual damages.

28          (7) A public or private sale authorized by this section must be conducted under the provisions of  
29 30-9A-601 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

30          (8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor,

1 and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining  
2 proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the  
3 remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and,  
4 if not claimed within 3 years, must revert to the general fund of the county available for general purposes."  
5

6 **NEW SECTION. Section 5. Purpose.** The purpose of [sections 5 through 11] is to promote the state's  
7 interest in reducing domestic or sexual violence by enabling victims of domestic or sexual violence and their  
8 families to flee existing dangerous housing in order to leave violent or abusive situations, achieve safety, and  
9 minimize the physical and emotional injuries from domestic or sexual violence and to reduce the devastating  
10 economic consequences to victims of domestic or sexual violence.  
11

12 **NEW SECTION. Section 6. Affirmative defense.** (1) In an action brought by a landlord against a  
13 tenant to recover rent for breach of a rental agreement, a tenant has an affirmative defense and is not liable for  
14 rent for the period after which a tenant vacates the premises owned by the landlord if, by a preponderance of the  
15 evidence, the court finds that:

16 (a) at the time the tenant vacated the premises, the tenant or a member of the tenant's household was  
17 under a credible imminent threat of domestic or sexual violence at the premises; and

18 (b) the tenant gave written notice to the landlord prior to or within 30 days of vacating the premises that  
19 the reason for vacating the premises was a credible imminent threat of domestic or sexual violence against the  
20 tenant or a member of the tenant's household.

21 (2) In an action brought by a landlord against a tenant to recover rent for breach of a rental agreement,  
22 a tenant has an affirmative defense and is not liable for rent for the period after which the tenant vacates the  
23 premises owned by the landlord if, by a preponderance of the evidence, the court finds that:

24 (a) a tenant or a member of the tenant's household was a victim of domestic or sexual violence on the  
25 premises owned or controlled by the landlord and the tenant has vacated the premises as a result of the domestic  
26 or sexual violence;

27 (b) (i) the tenant gave written notice to the landlord prior to or within 30 days of vacating the premises  
28 that the reason for vacating the premises was the domestic or sexual violence against the tenant or member of  
29 the tenant's household and providing the date of the domestic or sexual violence; and

30 (ii) the tenant provided at least one form of evidence to the landlord supporting the claim of the domestic

1 or sexual violence, including but not limited to medical, court, or police evidence or a statement from an employee  
2 of a victim services, domestic violence, or rape crisis organization or a member of the clergy from whom the  
3 tenant or a member of the tenant's household sought services; and

4 (c) the domestic or sexual violence occurred not more than 60 days prior to the date of giving the written  
5 notice to the landlord or, if the circumstances are such that the tenant cannot reasonably give notice because of  
6 reasons related to the domestic or sexual violence, such as hospitalization or seeking assistance for shelter or  
7 counseling, then as soon thereafter as practicable.

8 (3) Nothing in subsection (2) may be construed as a defense against an action in forcible entry and  
9 detainer for failure to pay rent before the tenant provided notice and vacated the premises. Nothing in [sections  
10 5 through 11] may be construed as a defense against an action for rent for a period of time before the tenant  
11 vacated the landlord's premises and gave notice to the landlord as required in subsection (2).

12

13 **NEW SECTION. Section 7. Change of locks -- written or oral agreements.** (1) (a) Upon written  
14 notice from all tenants who have signed under a rental agreement, the tenants may request that a landlord  
15 change the locks of the dwelling unit in which a tenant lives if one or more of the tenants covered by the rental  
16 agreement reasonably believe that one of the tenants or a member of a tenant's household is under a credible  
17 imminent threat of domestic or sexual violence at the premises. If the threat of violence is from a person who is  
18 not a tenant under the rental agreement, notice to the landlord requesting a change of locks must be  
19 accompanied by at least one form of evidence to support a claim of domestic or sexual violence, including  
20 medical, court, or police evidence of domestic or sexual violence or a statement from an employee of a victim  
21 services, domestic violence, or rape crisis organization or a member of the clergy from whom the tenant or a  
22 member of the tenant's household sought services. If the threat of violence is from a person who is a tenant under  
23 a rental agreement, notice to the landlord requesting a change of locks must be accompanied by a no contact  
24 order pursuant to 45-5-209. If the notice is accompanied by a no contact order, the tenant requesting a change  
25 of locks is not required to obtain written notice from the person posing a threat who is a tenant under the written  
26 agreement.

27 (b) Upon written notice from all tenants who are lessees under an oral rental agreement, the tenants may  
28 request that a landlord change the locks of the dwelling unit in which they live if one or more of the tenants  
29 reasonably believe that one of the tenants or a member of a tenant's household is under a credible imminent  
30 threat of domestic or sexual violence at the premises. Notice to the landlord requesting a change of locks must

1 be accompanied by a no contact order pursuant to 45-5-209. If the notice is accompanied by a no contact order,  
2 the tenant requesting a change of locks is not required to obtain written notice from the person posing a threat  
3 who is a tenant under the oral rental agreement.

4 (2) (a) Once a landlord has received notice of a request for change of locks and has received one form  
5 of evidence referred to in subsection (1), the landlord shall, within 48 hours, change the locks or give the tenant  
6 permission to change the locks. If the landlord changes the locks, the landlord shall make a good faith effort to  
7 give a key to the new locks to the tenant as soon as possible and not more than 48 hours after the locks are  
8 changed.

9 (b) The landlord may charge a fee for the expense of changing the locks, which may not exceed the  
10 reasonable price customarily charged for changing a lock.

11 (c) If a landlord fails to change the locks within 48 hours after being provided with the notice and  
12 evidence referred to in subsection (1), the tenant may change the locks without the landlord's permission. If the  
13 tenant changes the locks, the tenant shall make a good faith effort to give a key to the new locks to the landlord  
14 within 48 hours after the locks are changed. If a tenant changes the locks without the landlord's permission, the  
15 tenant shall do so in a workmanlike manner with locks at least equal in quality to the original locks.

16 (3) A landlord who changes locks or allows the change of locks in compliance with [sections 5 through  
17 11] is not liable to any third party for damages resulting from a person being unable to access the dwelling.

18  
19 **NEW SECTION. Section 8. Violation of lock-change provision -- exclusive remedy.** (1) If a landlord  
20 takes action to prevent a tenant who has complied with [section 7] from changing the locks, the tenant may seek  
21 a temporary restraining order, preliminary injunction, or permanent injunction ordering the landlord to refrain from  
22 preventing the tenant from changing the locks. A tenant who successfully brings an action pursuant to this section  
23 may be awarded reasonable attorney fees and costs.

24 (2) A tenant who changes locks and does not make a good faith effort to provide a copy of a key to the  
25 landlord within 48 hours after the tenant changes the locks is liable for any damages to the dwelling or the  
26 building in which the dwelling is located that could have been prevented had the landlord been able to access  
27 the dwelling unit in the event of an emergency.

28 (3) A landlord who changes locks and does not make a good faith effort to provide a copy of a key to the  
29 tenant within 48 hours after the landlord changes the locks is liable for any damages the tenant incurs as a result  
30 of not having access to the tenant's unit.

1 (4) The remedies provided to landlords and tenants under this section are sole and exclusive for  
2 violations of [section 7].

3  
4 **NEW SECTION. Section 9. Rental agreement protections -- retaliation by landlord prohibited.** (1)

5 A landlord may not terminate or fail to renew a rental agreement, serve a notice to terminate a rental agreement,  
6 bring or threaten to bring an action for possession, increase rent, decrease services, or refuse to enter into a  
7 rental agreement because:

8 (a) a tenant or applicant is or has been a victim of domestic or sexual violence;

9 (b) of a violation of the rental agreement or a provision of this chapter if the violation consists of an  
10 incident of domestic or sexual violence committed against the tenant or applicant; or

11 (c) of criminal activity relating to domestic or sexual violence in which the tenant or applicant is the victim  
12 or because of a police or emergency response related to domestic or sexual violence in which the tenant or  
13 applicant is or has been the victim.

14 (2) A landlord may not impose different rules, conditions, or standards or selectively enforce rules,  
15 conditions, or standards against a tenant or applicant because the tenant or applicant is or has been a victim of  
16 domestic or sexual violence.

17 (3) Notwithstanding subsections (1) and (2), a landlord may terminate the tenancy of a victim of domestic  
18 or sexual violence if the landlord has previously given the tenant a written warning regarding the conduct of the  
19 perpetrator relating to domestic or sexual violence and:

20 (a) the tenant permits or consents to the perpetrator's presence on the premises and the perpetrator is  
21 an actual and imminent threat to the safety of persons on the premises other than the victim; or

22 (b) the perpetrator is an unauthorized occupant and the tenant permits or consents to the perpetrator  
23 living in the dwelling unit without the permission of the landlord.

24 (4) Evidence provided to the landlord of domestic or sexual violence may include any of the following:

25 (a) law enforcement, court, or federal agency records or files;

26 (b) documentation from a domestic violence or sexual assault program;

27 (c) documentation from a religious, medical, or other professional.

28 (5) If a landlord violates this section:

29 (a) a tenant or applicant may recover up to 2 months' periodic rent or twice the actual damages sustained  
30 by the tenant or applicant, whichever is greater;



1 (b) the tenant has a defense to an action for possession by the landlord; and

2 (c) the applicant may obtain injunctive relief to gain possession of the dwelling unit.

3 (6) If a tenant asserts a successful defense under subsection (4) to an action for possession, the tenant  
4 is not entitled to prevailing party fees, attorney fees, or costs and disbursements if the landlord:

5 (a) did not know and did not have reasonable cause to know at the time of commencing the action that  
6 a violation or incident on which the action was based was related to domestic or sexual violence; and

7 (b) promptly dismissed tenants other than the perpetrator from the action upon becoming aware that the  
8 violation or incident on which the action was based was related to domestic or sexual violence.

9

10 **NEW SECTION. Section 10. Nondisclosure, confidentiality, and privilege -- penalty.** (1) A landlord  
11 may not disclose to a prospective landlord:

12 (a) that a tenant or a member of the tenant's household exercised rights under [sections 5 through 11];

13 or

14 (b) any information provided by the tenant or a member of the tenant's household in exercising those  
15 rights.

16 (2) The prohibition on disclosure under subsection (1) does not apply in civil proceedings brought under  
17 [sections 5 through 11] or if disclosure is required by law.

18 (3) A tenant or a member of the tenant's household who is the victim of domestic or sexual violence or  
19 is the parent or legal guardian of a victim of domestic or sexual violence may waive the prohibition on disclosure  
20 under subsection (1) by consenting to the disclosure in writing.

21 (4) Furnishing evidence to support a claim of domestic or sexual violence against a tenant or a member  
22 of the tenant's household pursuant to [section 6 or 7] does not waive any confidentiality or privilege that may exist  
23 between the victim of domestic or sexual violence and a third party.

24 (5) A landlord who in violation of this section discloses that a tenant has exercised the tenant's rights  
25 under [sections 5 through 11] or discloses any information provided by the tenant in exercising those rights is  
26 liable for actual damages up to \$2,000 resulting from the disclosure. A tenant who successfully brings an action  
27 pursuant to this section may be awarded reasonable attorney fees and costs.

28

29 **NEW SECTION. Section 11. Public housing excluded.** [Sections 5 through 10] do not apply to public  
30 housing assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1437, et seq., and its

1 implementing regulations, with the exception of the tenant-based housing choice voucher program. Public  
2 housing includes dwelling units in mixed-finance projects that are assisted through a public housing authority's  
3 capital, operating, or other funds.

4  
5 **NEW SECTION. Section 12. Codification instruction.** [Sections 5 through 11] are intended to be  
6 codified as an integral part of Title 70, chapter 24, and the provisions of Title 70, chapter 24, apply to [sections  
7 5 through 11].

8 - END -