

SENATE BILL NO. 174

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A FINDING OF UNCONSCIONABILITY BY THE COURT FOR CERTAIN TENANT AND LANDLORD RESPONSIBILITIES; REVISING CERTAIN JUDGMENTS FOR NONPAYMENT OF RENT; REVISING REQUIREMENTS RELATED TO NONCOMPLIANCE OF TENANTS; AND AMENDING SECTIONS 70-24-404, 70-24-421, 70-24-422, 70-24-423, 70-33-403, 70-33-410, 70-33-422, AND 70-33-423, MCA."

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

Section 1. Section 70-24-404, MCA, is amended to read:

"70-24-404. Unconscionability -- court discretion to refuse enforcement. (1) If Except as provided in subsection (2), if the court, as a matter of law, finds that:

(a) a rental agreement or any provision ~~thereof~~ of the rental agreement is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental agreement that:

(a) a tenant maintain a dwelling unit in accordance with 70-24-321; or

(b) a landlord maintain the premises in accordance with 70-24-303.

~~(2)(3)~~ If unconscionability is put into issue by a party or by the court upon its own motion, the parties ~~shall~~ must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination."

Section 2. Section 70-24-421, MCA, is amended to read:



1 **"70-24-421. Action for nonpayment of rent -- tenant's counterclaim.** (1) In an action for possession
 2 based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may
 3 counterclaim for any amount the tenant may recover under the rental agreement or this chapter. The court ~~from~~
 4 ~~time to time may~~ shall order the tenant to pay into court all ~~or part~~ of the rent accrued and thereafter accruing and
 5 shall determine the amount due to each party. The party to whom a net amount is owed must be paid first from
 6 the money paid into court, and the balance must be paid by the other party. The court may at any time release
 7 money paid into the court to either party if the parties ~~so~~ agree or if the court finds a party entitled to the ~~sums~~
 8 ~~released money~~. If no rent remains due after application of this section, judgment must be entered for against
 9 the tenant in the action for possession for payment of the landlord's attorney fees and costs in the event an action
 10 for possession is commenced by the landlord and the tenant pays the rent in full.

11 (2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided
 12 in subsection (1) but is not required to pay any rent into court."

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14 **Section 3.** Section 70-24-422, MCA, is amended to read:

15 **"70-24-422. Noncompliance of tenant generally -- landlord's right of termination -- damages --**
 16 **injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental
 17 agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant
 18 to 70-24-108 specifying the acts and omissions constituting the noncompliance, ~~and~~ that the rental agreement
 19 will terminate, and that the tenant shall vacate the premises upon on a date specified in the notice not less than
 20 the minimum number of days after receipt of the notice provided for in this section. The rental agreement
 21 terminates and the tenant shall vacate the premises as provided in the notice, subject to the following:

22 (a) If the noncompliance is remediable by ~~repairs, the payment of damages, or otherwise~~ or written
 23 approval of the landlord and the tenant ~~adequately~~ remedies the noncompliance before the date specified in the
 24 notice, the rental agreement does not terminate.

25 (b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

26 (c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is
 27 3 days.

28 (d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

29 (e) If substantially the same act or omission that constituted a prior noncompliance of which notice was
 30 given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice

1 specifying the noncompliance and the date of the termination of the rental agreement.

2 (2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the
3 landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within
4 that period, the landlord may terminate the rental agreement and the tenant shall vacate the premises if the
5 landlord terminates the rental agreement.

6 (3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation
7 of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying
8 the noncompliance under the provisions of 70-24-321(2) and the tenant shall vacate the premises if the landlord
9 terminates the rental agreement.

10 (4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that
11 neighboring tenants may be injured in violation of 70-24-321(3), the landlord may terminate the rental agreement
12 upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of
13 70-24-321(3) and the tenant shall vacate the premises if the landlord terminates the rental agreement.

14 (5) Except as provided in this chapter, the landlord ~~may~~ shall recover actual damages and obtain
15 injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided
16 in subsection (6), if the tenant's noncompliance is purposeful, the landlord ~~may~~ shall recover treble damages.

17 (6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

18 (7) The landlord is not bound by this section in the event that the landlord elects to use the 30-day notice
19 for termination of tenancy as provided in 70-24-441."

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21 **Section 4.** Section 70-24-423, MCA, is amended to read:

22 **"70-24-423. Waiver of landlord's right to terminate for breach.** Acceptance by the landlord of full
23 payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the
24 nonpayment of rent. Acceptance of full payment of rent due when a claimed breach is something other than the
25 nonpayment of rent does not constitute a waiver of any right. The acceptance of partial payment of rent due does
26 not constitute a waiver of any right, including rent due."

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28 **Section 5.** Section 70-33-403, MCA, is amended to read:

29 **"70-33-403. Unconscionability -- court discretion.** (1) ~~¶~~ Except as provided in subsection (2), if the
30 court, as a matter of law, finds that:

1 (a) a rental agreement or any provision of the rental agreement is unconscionable, the court, in order
 2 to avoid an unconscionable result, may refuse to enforce the agreement or may enforce the remainder of the
 3 agreement without the unconscionable provision result; or

4 (b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under
 5 a rental agreement is unconscionable, the court, in order to avoid an unconscionable result, may refuse to enforce
 6 the settlement, may enforce the remainder of the settlement without the unconscionable provision, or may limit
 7 the application of any unconscionable provision.

8 (2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental
 9 agreement that:

10 (a) a tenant maintain a lot in accordance with 70-33-321; or

11 (b) a landlord maintain the premises in accordance with 70-33-303.

12 ~~(2)~~(3) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must
 13 be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental
 14 agreement or settlement to aid the court in making its determination."
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16 **Section 6.** Section 70-33-410, MCA, is amended to read:

17 **"70-33-410. Action for nonpayment of rent -- tenant's counterclaim.** (1) (a) In an action for
 18 possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the
 19 tenant may counterclaim for any amount recoverable under the rental agreement or this chapter.

20 (b) (i) The court ~~may~~ shall order the tenant to pay into court all ~~or part~~ of the rent accrued and afterwards
 21 accruing, and the court shall determine the amount due to each party.

22 (ii) A party to whom a net amount is owed must be paid first from the money paid into court, and the
 23 balance must be paid by the other party.

24 (iii) The court may at any time release money paid into the court to any party if the parties agree or if the
 25 court finds a party is entitled to the money.

26 (c) If there is no rent remaining due after application of this section, judgment must be entered ~~for~~ against
 27 the tenant in an action for possession for payment of the landlord's attorney fees and costs in the event an action
 28 for possession is commenced by the landlord and the tenant pays the rent in full.

29 (2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided
 30 in subsection (1) but may not be required to pay any rent into court."

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2 **Section 7.** Section 70-33-422, MCA, is amended to read:

3 **"70-33-422. Noncompliance of tenant generally -- landlord's right of termination -- damages --**
4 **injunction.** (1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation
5 of 70-33-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying
6 the noncompliance under the provisions of 70-33-321(3). If the landlord terminates the rental agreement, the
7 tenant shall vacate the premises upon termination of the agreement.

8 (2) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that
9 neighboring tenants may be injured, as evidenced by the tenant being arrested or charged with an act that
10 violates the provisions of 70-33-321(4), the landlord may terminate the rental agreement upon giving 3 days'
11 written notice specifying the violation and noncompliance under the provisions of 70-33-321(4). If the landlord
12 terminates the rental agreement, the tenant shall vacate the premises upon termination of the agreement.

13 (3) Except as otherwise provided in this chapter, the landlord ~~may~~ shall recover actual damages and
14 obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-33-321. Except as
15 provided in subsection (4) of this section, if the tenant's noncompliance is purposeful, the landlord ~~may~~ shall
16 recover treble damages.

17 (4) Treble damages may not be recovered for the tenant's early termination of the tenancy."
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19 **Section 8.** Section 70-33-423, MCA, is amended to read:

20 **"70-33-423. Waiver of landlord's right to termination.** (1) Acceptance by the landlord of full payment
21 of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the
22 nonpayment of rent.

23 (2) Acceptance of full payment of rent due when a claimed breach is something other than the
24 nonpayment of rent does not constitute a waiver of any right.

25 (3) The acceptance of partial payment of rent due does not constitute a waiver of any right, including rent
26 due."

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28 NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that matured,
29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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