

1-1 By: Creighton S.B. No. 1783  
1-2 (In the Senate - Filed March 12, 2021; March 26, 2021, read  
1-3 first time and referred to Committee on Business & Commerce;  
1-4 April 19, 2021, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 19, 2021,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Hancock	X		
1-10	Nichols	X		
1-11	Campbell	X		
1-12	Creighton	X		
1-13	Johnson	X		
1-14	Menéndez		X	
1-15	Paxton	X		
1-16	Schwertner	X		
1-17	Whitmire	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1783 By: Hancock

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to a fee collected by a landlord in lieu of a security  
1-22 deposit.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subchapter C, Chapter 92, Property Code, is  
1-25 amended by adding Section 92.111 to read as follows:

1-26 Sec. 92.111. FEE IN LIEU OF SECURITY DEPOSIT. (a) If a  
1-27 security deposit is required by a residential lease, the landlord  
1-28 may choose to offer the tenant an option to pay a fee in lieu of a  
1-29 security deposit. If a landlord offers a tenant the option of  
1-30 paying a fee in lieu of a security deposit, the landlord:

1-31 (1) shall offer the tenant the option to instead pay a  
1-32 security deposit; and

1-33 (2) may not use a prospective tenant's choice to pay a  
1-34 fee in lieu of a security deposit or a security deposit as a  
1-35 criterion in the determination of whether to approve an application  
1-36 for occupancy.

1-37 (b) At the time a landlord offers to a tenant the option of  
1-38 paying a fee in lieu of a security deposit, the landlord shall  
1-39 notify the tenant in writing:

1-40 (1) that the tenant has the option to instead pay a  
1-41 security deposit;

1-42 (2) that the tenant has the option to terminate the  
1-43 agreement to pay the fee in lieu of a security deposit at any time  
1-44 and stop paying the fee, and instead, to pay a security deposit in  
1-45 the amount that is otherwise offered to new tenants for  
1-46 substantially similar housing on the date the tenant chooses to pay  
1-47 the security deposit; and

1-48 (3) of the charges for each option described by  
1-49 Subdivision (1) or (2).

1-50 (c) If the tenant decides to pay a fee in lieu of a security  
1-51 deposit, an agreement to collect the fee must be in writing and  
1-52 signed by:

1-53 (1) the landlord or the landlord's legal  
1-54 representative; and

1-55 (2) the tenant.

1-56 (d) A fee in lieu of a security deposit must be:

1-57 (1) a recurring fee of equivalent amount; and

1-58 (2) payable at the time each rent payment is due during  
1-59 the lease.

1-60 (e) A fee collected under this section may be used to

2-1 purchase insurance coverage for damages and charges for which the  
 2-2 tenant is legally liable under the lease or as a result of breaching  
 2-3 the lease. A landlord may not charge the tenant a fee that is more  
 2-4 than the reasonable cost of obtaining and administering the  
 2-5 insurance purchased under this subsection.

2-6 (f) If the tenant decides to pay a fee in lieu of a security  
 2-7 deposit and the landlord purchases insurance coverage as described  
 2-8 by Subsection (e), an agreement required under Subsection (c) must  
 2-9 clearly specify the following terms:

2-10 (1) the fee is being paid only to secure occupancy  
 2-11 without a requirement of paying a security deposit;

2-12 (2) the fee, unless otherwise specified, is not  
 2-13 refundable;

2-14 (3) payment of the fee, unless otherwise specified,  
 2-15 does not eliminate, release, or otherwise limit the requirements of  
 2-16 the lease, including that the tenant must pay for:

2-17 (A) rent as the rent becomes due; and

2-18 (B) damages for which the tenant is legally  
 2-19 liable under the lease, other than normal wear and tear; and

2-20 (4) the fee, unless otherwise specified, is not paying  
 2-21 for insurance that covers the tenant or otherwise changes the  
 2-22 tenant's obligation to pay rent and damages beyond normal wear and  
 2-23 tear.

2-24 (g) Except as provided by Subsection (h), a fee collected  
 2-25 under this section is a security deposit for purposes of this  
 2-26 chapter.

2-27 (h) A fee collected under this section is not a security  
 2-28 deposit for purposes of this chapter if:

2-29 (1) an agreement was signed under Subsection (c); and

2-30 (2) the fee is used to purchase insurance coverage for  
 2-31 damages and unpaid rent for which the tenant is legally liable under  
 2-32 the lease or as a result of breaching the lease.

2-33 (i) A landlord may not charge a tenant for normal wear and  
 2-34 tear of a dwelling.

2-35 (j) A landlord may not submit a claim for damages or unpaid  
 2-36 rent to an insurer for insurance described by Subsection (e) unless  
 2-37 the landlord notifies the tenant of the damages or unpaid rent  
 2-38 indebtedness not later than the 30th day after the date the tenant  
 2-39 surrendered possession of the dwelling. The notice must include a  
 2-40 written description and itemized list of all damages, if any, and of  
 2-41 unpaid rent, if any, including the dates the rent payments were due.

2-42 (k) If the tenant challenges the claim for damages or unpaid  
 2-43 rent and that challenge results in a determination by the landlord  
 2-44 or by a court that the notice of indebtedness is incorrect, the  
 2-45 indebtedness is void and the landlord may not file an insurance  
 2-46 claim for insurance purchased under Subsection (e) in the amount of  
 2-47 the voided indebtedness. If the landlord has already submitted to  
 2-48 the insurer a claim for the voided indebtedness, the claim must be  
 2-49 withdrawn. If the insurance company has already paid the landlord  
 2-50 for the invalidated claim, the landlord shall return the payment.

2-51 (l) If an insurer compensates a landlord for a tenant's  
 2-52 damages or unpaid rent under a valid claim:

2-53 (1) the landlord may not seek or collect reimbursement  
 2-54 from the tenant of the amounts that the insurer paid to the  
 2-55 landlord;

2-56 (2) the insurer that has paid a landlord after receipt  
 2-57 of a claim filed by a landlord, if allowed by a subrogation clause  
 2-58 in the insurance described by Subsection (e) and before the first  
 2-59 anniversary of the termination of the tenant's occupancy, may seek  
 2-60 reimbursement from the tenant of only the amounts paid to the  
 2-61 landlord; and

2-62 (3) the tenant is entitled to any defenses to payment  
 2-63 against the insurer as against the landlord.

2-64 (m) If an insurer seeks reimbursement under Subsection  
 2-65 (1)(2), the insurer must include in the reimbursement demand:

2-66 (1) evidence of damages or unpaid rent that the  
 2-67 landlord submitted to the insurer;

2-68 (2) evidence of damage repair costs that the landlord  
 2-69 submitted to the insurer; and

3-1 (3) a copy of the settled claim that documents  
3-2 payments made by the insurer to the landlord.

3-3 SECTION 2. Section 92.111, Property Code, as added by this  
3-4 Act, applies only to a lease entered into or renewed on or after the  
3-5 effective date of this Act. A lease entered into or renewed before  
3-6 the effective date of this Act is governed by the law as it existed  
3-7 immediately before the effective date of this Act, and that law is  
3-8 continued in effect for that purpose.

3-9 SECTION 3. This Act takes effect September 1, 2021.

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