

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Permit the Use of Surety Bonds in Lieu of Security Deposits

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA §6031, sub-§3 is enacted to read:

3. Surety bond. "Surety bond" means a bond purchased by a tenant in lieu of making a security deposit when the function of the bond is to secure the performance of a rental agreement for residential premises or any part of residential premises.

Sec. 2. 14 MRSA §6039 is enacted to read:

§ 6039. Surety bonds

The following terms apply to the purchase of surety bonds by tenants of residential dwellings.

1. Landlord option. A residential landlord may offer a tenant the option of purchasing a surety bond in lieu of providing some or all of a security deposit, but a landlord may not require nor otherwise be required to consent to the purchase of a surety bond by a tenant.

2. Refund by surety. A surety shall refund to a tenant any premium or other charge paid by the tenant in connection with a surety bond if, after the tenant purchases a surety bond, the landlord refuses to accept the surety bond or the tenant does not enter into a rental agreement with the landlord.

3. Surety limitation; right of action. The amount of a surety bond purchased may not exceed 2 months' rent for the tenant's dwelling unit. If a tenant purchases a surety bond and provides a security deposit, the aggregate amount of both the surety bond and the security deposit may not exceed 2 months' rent for the dwelling unit. In the event a landlord consents to a surety bond but requires that the surety bond amount alone or in the aggregate with a security deposit exceed 2 months' rent, the tenant has a right of action against the landlord for wrongful assessment of surety bond subject to the following conditions.

A. The tenant shall give notice to the landlord of the tenant's intention to bring a legal action for wrongful assessment of surety bond no less than 7 days prior to commencing the action. If the landlord fails to return the excess assessment within the 7-day period, it is presumed that the landlord wrongfully assessed the surety bond requirement.

B. In a successful action against the landlord, the tenant may recover up to 3 times the excess amount demanded of the surety bond by the landlord, plus reasonable attorney's fees and court costs.

C. In any action brought under this subsection, the landlord has the burden of proving that the landlord's requirement of security was not wrongful.

4. Notice of rights. The surety or landlord shall deliver to a tenant a copy of any agreements or documents signed by the tenant at the time of the tenant's purchase of the surety bond. The surety or landlord shall advise the tenant in writing of all of the tenant's rights under this section prior to the purchase of a surety bond. This notice must conform to the requirements of Title 24-A, section 2441, subsection 1.

5. Notice of rights and responsibilities by surety. In addition to the requirements of subsection 4, before a tenant purchases a surety bond a surety shall conspicuously disclose to the tenant in writing the following rights and responsibilities of tenants:

- A. The surety bond premium is nonrefundable except as provided in subsection 2;
- B. The surety bond is not insurance for the tenant;
- C. The surety bond is being purchased to protect the landlord against loss due to, but not limited to, the following: nonpayment of rent, nonpayment of utility charges that the tenant was required to pay directly to the landlord, breach of the rental agreement, storing and disposing of unclaimed property or damages caused by the tenant other than normal wear and tear;
- D. The tenant may be required to reimburse the surety for amounts the surety paid to the landlord;
- E. Even after a tenant purchases a surety bond, the tenant remains responsible for payment of:
 - (1) All unpaid rent;
 - (2) Damage due to breach of the rental agreement;
 - (3) Damage by the tenant or members of the tenant's household or their invitees or guests in excess of normal wear and tear to the leased premises, common areas, major appliances or furnishings owned by the landlord;
 - (4) Utility charges that the tenant was required to pay directly to the landlord; and
 - (5) The cost of storing and disposing of unclaimed property;
- F. The tenant has the right to pay the damages directly to the landlord or require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond; and
- G. If the surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond.

The notice required by this subsection must conform to the requirements of Title 24-A, section 2441, subsection 1.

The word "nonrefundable" must be conspicuously placed on the document and must be in a minimum of 16-point, bold-faced type. This word must appear on the first page of the disclosure and must be repeated immediately above the signature line for the tenant.

6. Use of surety bond. A surety bond does not represent liquidated damages and may not be used as payment to a landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach consistent with the provisions of this section. Except as provided in this section, a surety may not, directly or indirectly, make any other payment to a landlord. A surety bond may be used to pay claims by a landlord for:

- A. Unpaid rent;
- B. Damage due to breach of the rental agreement;
- C. Damage by the tenant or members of the tenant's household or their invitees or guests in excess of normal wear and tear to the leased premises, common areas, major appliances or furnishings owned by the landlord;
- D. Nonpayment of utility charges that the tenant was required to pay directly to the landlord; and
- E. The cost of storing and disposing of unclaimed property.

7. Written list of damages. At least 10 days before a landlord makes a claim against a surety bond subject to this section, the landlord shall send to the tenant by first-class mail directed to the last known address of the tenant a written notice indicating the landlord's intent to make such claim and the tenant's right to dispute the claim and containing a list of the damages to be claimed and a statement of the costs actually incurred by the landlord related to the premises and as otherwise permitted by this section. This notice must further indicate the name and address of the surety and process for disputing a claim. In the case of a written rental agreement, the landlord shall mail such a written notice within the time specified in the agreement, not to exceed 30 days. In the case of a tenancy at will, the landlord shall mail the written notice 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs later. If a landlord fails to provide a written notice within the time required by this subsection, the landlord forfeits any right to make a claim against a surety bond or the tenant related to the premises.

8. Payment of damages by tenant. A tenant may pay any damages directly to the landlord or require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond. If a tenant pays any damages directly to the landlord or requires the landlord to use the tenant's security deposit under this subsection and the payment or the security deposit fully satisfies the claim, the landlord forfeits the right to make a claim under the surety bond for any damages covered by the tenant's payment or the amount deducted from the tenant's security deposit in accordance with this subsection.

9. Dispute of claim. The tenant may dispute the landlord's claim to the surety by sending a written response by first-class mail to the surety within 10 days after receiving the notice described in subsection 7 of the landlord's claim on the surety. If the tenant disputes the claim, the surety may not report the claim to a credit reporting agency prior to obtaining a judgment for the claim against the tenant.

10. Action by surety against tenant. In any proceeding brought by the surety against the tenant on a surety bond under this section, the tenant retains all rights and defenses otherwise available in a proceeding between a tenant and a landlord. Damages may be awarded to the surety only to the extent that the tenant would have been liable to the landlord under this section. If a surety, in an action against the tenant, asserts a claim under the surety bond without having a reasonable basis to assert the claim, the court may grant the tenant damages of up to 3 times the amount claimed plus reasonable attorney's fees and court costs.

11. Loss of claim by surety. If a surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond.

12. Transfer of premises. If a landlord's interest in the rented premises is sold or transferred, the new landlord shall accept the tenant's surety bond and may not require an additional security deposit or surety bond from the tenant during the rental term that the premises is sold or transferred. At any renewal of the rental agreement, the new landlord may not require a surety bond or a security deposit from the tenant that, in addition to any existing surety bond or security deposit, is in an aggregate amount in excess of 2 months' rent for the tenant's dwelling unit. If the aggregate amount described above is in excess of 2 months' rent, the tenant may bring an action for wrongful assessment of surety bond under subsection 3.

13. Licensed surety. A surety bond issued under this section may only be issued by an admitted carrier licensed by the Department of Professional and Financial Regulation, Bureau of Insurance.

SUMMARY

This bill allows tenants, at their sole option, to purchase surety bonds in lieu of some or all of a required security deposit for the purpose of assisting tenants who have insufficient resources to provide a security deposit for a residential dwelling unit. The bill also sets forth a series of restrictions on the issuance of surety bonds, including required disclosures to tenants, limitations on when and how a landlord can draw upon a surety bond and establishment of a tenant's right of action in the event of wrongful assessment of surety bond.