

# HOUSE BILL ANALYSIS

## HB 2624

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**Title:** An act relating to withholding rent with intent to defraud.

**Brief Description:** Prohibiting withholding rent with intent to defraud.

**Sponsors:** Representatives Sterk, Crouse, Mulliken, Mielke, Benson, Honeyford and Thompson.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Trudes Hutcheson (786-7384).

**Background:** Most noncommercial rental agreements are governed by the Residential Landlord-Tenant Act (RLTA). The RLTA establishes various rights, obligations, duties, and remedies for both landlords and tenants.

If a tenant fails to pay rent, the landlord may bring an unlawful detainer action against the tenant. An unlawful detainer action is a proceeding by which a landlord may legally evict a tenant because the tenant has lost the right to legally be in possession of the property. Before commencing an unlawful detainer action for failure to pay rent, the landlord must first serve the tenant with a three-day notice to pay rent or vacate the premises.

Service of the notice must be accomplished either by: (a) personal service; (b) leaving a copy with a person of suitable age and discretion at the premises and sending a copy through the mail; or (c) affixing a copy of the notice in a conspicuous place on the premises and delivering a copy to a person residing at the premises, if a person is there, and sending a copy through the mail. A tenant who fails to pay rent within three days after service of the notice is considered in unlawful detainer.

Under common law, the landlord had what is called the right of distress, which allowed the landlord to seize a tenant's personal property to satisfy unpaid rent. The RLTA has specifically abolished the right of distress.

In addition to other various duties, the landlord has the duty to remedy defective conditions on the premises within a reasonable time. If the landlord fails to do so, the tenant may terminate the rental agreement upon written notice without further obligation to pay rent and is entitled to a pro rate refund of any prepaid rent. Under certain circumstances, the tenant may, after giving notice of the defective condition to

the landlord, submit to the landlord a good faith estimate of the cost of repairs and deduct the amount of the costs from the rent.

The statutory maximum sentence for a class B felony is confinement for up to 10 years, or a fine of up to \$20,000, or both. The statutory maximum sentence for a class C felony is confinement for up to five years, or a fine up to \$10,000, or both. A gross misdemeanor is punishable by up to one year in the county jail, or by a fine up to \$5,000, or both.

**Summary of Bill:** A new section is added to the Residential Landlord-Tenant Act. Any tenant who has entered into a written rental agreement and who uses, occupies, or exerts control over the premises with intent to defraud the owner of the agreed-upon rental value, or removes himself or herself from the premises with the intent to terminate the tenancy without paying the full amount of rent is guilty of a crime.

It is a class B felony if the total rental amount withheld is more than \$1,500. It is a class C felony if the total rental amount withheld is more than \$250 but less than \$1,500. It is a gross misdemeanor if the total rental amount withheld is less than \$250.

If more than one incident of withholding of rent under the same written rental agreement occurs in uninterrupted succession, the amounts withheld may be aggregated into one count. The sum of the amounts shall be the value considered in determining the class of crime.

There is a presumption of intent to defraud if the tenant fails to contact the owner or other responsible person within 10 days of being served with a written notice and demand to pay the amount. The notice and demand must clearly state that failure to pay creates a presumption that the person intends to defraud and may result in criminal charges.

Service of the notice and demand must be made in the same way unlawful detainer notices are made. The bill does not apply where there is a bona fide dispute as to the amount of rent due based on the landlord's failure to repair defective conditions. The bill also does not apply to commercial leases.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

Office of Program Research