

# HOUSE BILL No. 1881

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-31.

**Synopsis:** Landlord-tenant law. Provides that a landlord holds a tenant's security deposit in trust. Changes the definition of "tenant" to include individuals who formerly occupied the dwelling unit. Makes changes relating to the return of a security deposit to a tenant, including timing, giving of notice, and content of notices. Describes circumstances under which a landlord may enter a tenant's dwelling unit. Describes the condition in which a tenant must leave the dwelling unit at the end of occupancy. Makes technical changes.

**Effective:** July 1, 2003.

---

---

## Pierce, Foley

---

---

January 23, 2003, read first time and referred to Committee on Commerce and Economic Development.

---

---

C  
o  
p  
y



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

C  
o  
p  
y

## HOUSE BILL No. 1881



A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 32-31-3-3, AS ADDED BY P.L.2-2002, SECTION
- 2 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 3 2003]: Sec. 3. As used in this chapter, "landlord" means:
- 4 (1) the owner ~~lessor, or sublessor~~ of a rental unit or the property
- 5 of which the unit is a part; or
- 6 (2) a person authorized to exercise any aspect of the management
- 7 of the premises, including a person who directly or indirectly:
- 8 (A) acts as a rental agent; or
- 9 (B) receives rent or any part of the rent other than as a bona
- 10 fide purchaser.
- 11 SECTION 2. IC 32-31-3-8, AS ADDED BY P.L.2-2002, SECTION
- 12 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 13 2003]: Sec. 8. As used in this chapter, "rental unit" means:
- 14 (1) a structure, or the part of a structure, that is used as a home,
- 15 residence, or sleeping unit by:
- 16 (A) one (1) individual who maintains a household; or
- 17 (B) two (2) or more individuals who maintain a common



- 1 household; or  
 2 (2) any grounds, facilities, or area promised for the use of a  
 3 residential tenant, including the following:  
 4 (A) An apartment unit.  
 5 (B) A boarding house.  
 6 (C) A rooming house.  
 7 (D) ~~A mobile home space.~~ **manufactured home (as defined**  
 8 **in IC 22-12-1-16) or a mobile structure (as defined in**  
 9 **IC 22-12-1-17) used as a dwelling, or the space on which a**  
 10 **manufactured home or mobile structure is placed.**  
 11 (E) A single or two (2) family dwelling.

12 SECTION 3. IC 32-31-3-9, AS ADDED BY P.L.2-2002, SECTION  
 13 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 14 2003]: Sec. 9. (a) As used in this chapter, "security deposit" means a  
 15 deposit paid by a tenant to the landlord or the landlord's agent to be  
 16 held for all or a part of the term of the rental agreement to secure  
 17 performance of any obligation of the tenant under the rental agreement.

18 (b) The term includes **any of the following:**

- 19 (1) A required prepayment of rent other than the first full rental  
 20 payment period of the lease agreement.  
 21 (2) A sum required to be paid as rent in any rental period in  
 22 excess of the average rent for the term. ~~and~~  
 23 (3) Any other amount of money or property returnable to the  
 24 tenant on condition of return of the rental unit by the tenant in a  
 25 ~~condition as required by the rental agreement.~~ **compliance with**  
 26 **this article.**

27 (c) The term does not include the following:

- 28 (1) An amount paid for an option to purchase ~~under a lease with~~  
 29 ~~option to purchase~~; unless it is shown that the intent was to evade  
 30 this chapter.  
 31 (2) An amount paid as a subscription for or purchase of a  
 32 membership in a cooperative housing association incorporated  
 33 under Indiana law.

34 SECTION 4. IC 32-31-3-10, AS ADDED BY P.L.2-2002,  
 35 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 2003]: Sec. 10. As used in this chapter, "tenant" means an  
 37 individual who occupies **or formerly occupied** a rental unit:

- 38 (1) for residential purposes; **and**  
 39 (2) with the landlord's consent. ~~and~~  
 40 ~~(3) for consideration that is agreed upon by both parties.~~

41 SECTION 5. IC 32-31-3-11.5 IS ADDED TO THE INDIANA  
 42 CODE AS A **NEW** SECTION TO READ AS FOLLOWS



C  
 O  
 P  
 Y

1 [EFFECTIVE JULY 1, 2003]: **Sec. 11.5. A landlord holds a security**  
 2 **deposit in trust for a tenant.**

3 SECTION 6. IC 32-31-3-12, AS ADDED BY P.L.2-2002,  
 4 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5 JULY 1, 2003]: Sec. 12. (a) Upon termination of a rental agreement **or**  
 6 **a tenant's occupancy**, a landlord shall return to the tenant the security  
 7 deposit minus any amount applied to:

- 8 (1) the payment of accrued rent;  
 9 (2) the amount of damages that the landlord has suffered or will  
 10 reasonably suffer by reason of the tenant's noncompliance with  
 11 ~~law or the rental agreement; this article;~~ and  
 12 (3) unpaid utility or sewer charges that the tenant is obligated to  
 13 pay; ~~under the rental agreement;~~

14 all as itemized by the landlord with the amount due in a written notice  
 15 that is delivered to the tenant not more than forty-five (45) days after  
 16 termination of the rental agreement ~~and~~ **or** delivery of possession. The  
 17 landlord is not liable under this chapter until the tenant supplies the  
 18 landlord in writing with a mailing address to which to deliver the notice  
 19 and amount prescribed by this subsection. ~~Unless otherwise agreed;~~

20 **(b) A written lease must provide a place for the tenant to record**  
 21 **any addresses to which any of the following should be sent:**

- 22 **(1) The security deposit.**  
 23 **(2) Notice of abandoned property.**  
 24 **(3) Legal process.**

25 **(c)** A tenant is not entitled to apply a security deposit to rent.

26 ~~(b)~~ **(d)** If a landlord fails to comply with subsection (a), a tenant may  
 27 recover all of the security deposit due the tenant and reasonable  
 28 attorney's fees.

29 ~~(c)~~ **(e)** This section does not preclude the landlord or tenant from  
 30 recovering other damages to which either is entitled.

31 ~~(d)~~ **(f)** The owner of the dwelling unit at the time of the termination  
 32 of the rental agreement is bound by this section.

33 SECTION 7. IC 32-31-3-13, AS ADDED BY P.L.2-2002,  
 34 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2003]: Sec. 13. A security deposit may be used only for the  
 36 following purposes:

- 37 (1) To reimburse the landlord for actual damages to the rental unit  
 38 or any ancillary facility that are not the result of ordinary wear and  
 39 tear.  
 40 (2) To pay the landlord for:  
 41 (A) all rent in arrearage under the rental agreement; and  
 42 (B) rent due for premature termination of the rental agreement.

C  
O  
P  
Y



- 1           ~~by the tenant.~~
- 2           (3) To pay for the last payment period of a residential rental
- 3           agreement if a written agreement between the landlord and the
- 4           tenant stipulates that the security deposit will serve as the last
- 5           ~~payment. of rent due.~~
- 6           (4) To reimburse the landlord for utility or sewer charges paid by
- 7           the landlord that are:
- 8           (A) the obligation of the tenant; ~~under the rental agreement;~~
- 9           and
- 10          (B) unpaid by the tenant.
- 11          SECTION 8. IC 32-31-3-14, AS ADDED BY P.L.2-2002,
- 12          SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 13          JULY 1, 2003]: Sec. 14. (a) Not more than forty-five (45) days after the
- 14          termination of occupancy, a landlord shall mail to a tenant an itemized
- 15          list of damages claimed for which the security deposit may be used
- 16          under section 13 of this chapter.
- 17          (b) The list must set forth:
- 18               (1) the estimated cost of repair for each damaged item; and
- 19               (2) the:
- 20                   (A) amounts; and
- 21                   (B) **lease or lease terms;**
- 22                   on which the landlord intends to assess the tenant.
- 23          **The landlord must include with the list a copy of any receipts for**
- 24          **repairs already made.**
- 25          (c) The landlord shall include with the list a check or money order
- 26          for the difference between the damages ~~claimed~~ and the amount of the
- 27          security deposit held by the landlord.
- 28          SECTION 9. IC 32-31-3-17, AS ADDED BY P.L.2-2002,
- 29          SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 30          JULY 1, 2003]: Sec. 17. A waiver of **the rights and obligations set**
- 31          **forth in** this chapter by a landlord or tenant is void.
- 32          SECTION 10. IC 32-31-3-18, AS ADDED BY P.L.2-2002,
- 33          SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34          JULY 1, 2003]: Sec. 18. (a) A landlord or a person authorized to enter
- 35          into a rental agreement on behalf of the landlord shall disclose and
- 36          furnish to the tenant in writing at or before the commencement of the
- 37          rental agreement the names and addresses of the following:
- 38               (1) A person residing in Indiana who is authorized to manage the
- 39               dwelling unit.
- 40               (2) A person residing in Indiana who is reasonably accessible to
- 41               the tenant and who is authorized to act as agent for the owner for
- 42               purposes of:

C  
o  
p  
y



1 (A) service of process; and

2 (B) receiving ~~and receipting~~ for notices and demands.

3 A person who is identified as being authorized to manage under  
4 subdivision (1) may also be identified as the person authorized to act  
5 as agent under subdivision (2).

6 (b) This section is enforceable against any successor landlord,  
7 owner, or manager.

8 (c) A person who fails to comply with subsection (a) becomes an  
9 agent of each person who is a landlord for purposes of:

10 (1) service of process and receiving ~~and receipting~~ for notices and  
11 demands; and

12 (2) performing the obligations of the landlord under law or the  
13 rental agreement.

14 (d) If the information required by subsection (a) is not disclosed at  
15 the beginning of the rental agreement, the tenant shall be allowed any  
16 expenses reasonably incurred to discover the names and addresses  
17 required to be furnished.

18 SECTION 11. IC 32-31-3-19, AS ADDED BY P.L.2-2002,  
19 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
20 JULY 1, 2003]: Sec. 19. (a) ~~Unless otherwise agreed~~; If a landlord  
21 conveys, in a good faith sale to a bona fide purchaser, property that  
22 includes a dwelling unit subject to a rental agreement, the landlord is  
23 relieved of liability under law or the rental agreement as to events  
24 occurring after written notice to the tenant of the conveyance.  
25 However, for one (1) year after giving notice of the conveyance, the  
26 landlord remains liable to the tenant for the security deposit to which  
27 the tenant is entitled under section 14 of this chapter unless:

28 (1) the purchaser acknowledges that the purchaser has assumed  
29 the liability of the seller by giving notice to the tenant; and

30 (2) upon conveyance the seller transfers the security deposit to the  
31 purchaser.

32 (b) ~~Unless otherwise agreed~~; A manager of a dwelling unit is  
33 relieved of any liability the manager might have under law or the rental  
34 agreement as to events occurring after written notice to the tenant of  
35 the termination of the manager's management.

36 SECTION 12. IC 32-31-5-1, AS ADDED BY P.L.2-2002,  
37 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
38 JULY 1, 2003]: Sec. 1. (a) This chapter applies only to a rental  
39 agreement entered into or renewed after June 30, 1999.

40 (b) This chapter applies to a landlord or tenant only if the rental  
41 agreement was entered into or renewed after June 30, 1999.

42 (c) A waiver of **the rights and obligations set forth in** this chapter

C  
o  
p  
y



1 by a landlord or tenant, including a former tenant, by contract or  
2 otherwise, is void.

3 SECTION 13. IC 32-31-5-6, AS ADDED BY P.L.2-2002,  
4 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2003]: Sec. 6. (a) This section does not apply if the dwelling  
6 unit has been abandoned.

7 (b) For purposes of this section, a dwelling unit is considered  
8 abandoned if:

9 (1) the tenants have failed to:

10 (A) pay; or

11 (B) offer to pay;

12 rent due under the rental agreement; and

13 (2) the circumstances are such that a reasonable person would  
14 conclude that the tenants have surrendered possession of the  
15 dwelling unit.

16 An oral or written rental agreement may not define abandonment  
17 differently than is provided by this subsection.

18 (c) Except as authorized by judicial order, a landlord may not deny  
19 or interfere with a tenant's access to or possession of the tenant's  
20 dwelling unit by commission of any act, including the following:

21 (1) Changing the locks or adding a device to exclude the tenant  
22 from the dwelling unit.

23 (2) Removing the doors, windows, fixtures, or appliances from  
24 the dwelling unit.

25 (3) Interrupting, reducing, shutting off, or causing termination of  
26 any of the following to a tenant:

27 (A) Electricity.

28 (B) Gas.

29 (C) Water.

30 (D) Other essential services.

31 However, the landlord may interrupt, shut off, or terminate  
32 service as the result of an emergency, good faith repairs, or  
33 necessary construction. This subdivision does not require a  
34 landlord to pay for services described in this subdivision if the  
35 landlord has not agreed, by an oral or written rental agreement, to  
36 do so.

37 (d) A tenant may not interrupt, reduce, shut off, or cause termination  
38 of:

39 (1) electricity;

40 (2) gas;

41 (3) water; or

42 (4) other essential services;

C  
O  
P  
Y



1 to the dwelling unit if the interruption, reduction, shutting off, or  
 2 termination of the service will result in serious damage to the rental  
 3 unit.

4 **(e) A landlord may enter a tenant's dwelling unit during normal**  
 5 **business hours to perform routine maintenance or to show the**  
 6 **dwelling unit to prospective tenants only after giving the tenant**  
 7 **notice of at least twenty-four (24) hours. A landlord is not required**  
 8 **to give notice to a tenant to enter the tenant's dwelling unit in case**  
 9 **of an emergency that threatens the safety of the occupants or the**  
 10 **landlord's property. A tenant may not unreasonably deny a**  
 11 **landlord access to the dwelling unit under this subsection.**

12 SECTION 14. IC 32-31-7-6, AS ADDED BY P.L.92-2002,  
 13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14 JULY 1, 2003]: Sec. 6. **(a)** At the termination of a tenant's occupancy,  
 15 the tenant shall deliver the rental premises to the landlord in a clean  
 16 and proper condition, excepting ordinary wear and tear expected in the  
 17 normal course of habitation of a dwelling unit.

18 **(b) For purposes of this section, a tenant is required to leave the**  
 19 **tenant's dwelling unit in an undamaged, broom clean condition.**  
 20 **Conditions that require only routine cleaning and maintenance**  
 21 **needed to prepare a dwelling unit for another tenant's occupancy**  
 22 **are considered ordinary wear and tear and do not constitute**  
 23 **damage.**

C  
o  
p  
y

