

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1032

S. P. 357

In Senate, February 26, 1981

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Carpenter of Aroostook.

Cosponsor: Senator Kerry of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Prohibit Unconscionable or Exploitative Residential Rental Agreements.

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

14 MRSA § 6024 is enacted to read:

§ 6024. Unconscionable rental agreements

1. **Prohibited or unenforceable provisions.** No landlord may include a clause or provision in a residential rental agreement which is prohibited, which is unenforceable by law or which purports to achieve the same effect or purpose as a clause or provision that is prohibited by law. Any clause or provision in a residential rental agreement which conflicts with this section is void and unenforceable.

2. **Clauses which are.** A residential rental agreement shall not:

A. **Provide that the tenant pay rent or accept the premises when the premises are in a condition which violates the covenants required pursuant to section 6021, except as provided therein;**

B. **Provide that the tenant waive a right regarding security deposits established by chapter 710-A;**

- C. Exclude or discriminate against a person in violation of Title 5, chapter 337;
- D. Provide for a confession of judgment by the tenant;
- E. Exculpate the lessor from indemnification of, or contribution to, the tenant for liability imposed by law for the lessor's failure to perform, or negligent performance of, a duty to the tenant or an invitee or licensee of the tenant;
- F. Waive or alter the tenant's right to demand a trial by jury or any other right of legal notice or procedure in a dispute arising under the rental agreement;
- G. Provide that the tenant is liable for legal costs or attorneys' fees incurred by the lessor in connection with a dispute arising under the rental agreement, other than those costs or fees specifically permitted by statute;
- H. Provide for the acquisition by the lessor of a security interest in any personal property of the tenant other than a security deposit permitted by chapter 710-A;
- I. Accelerate rental payment due if a breach of the lease occurs;
- J. Require payment of a charge or fee by the tenant as a penalty for the late payment of rent or other charge under the rental agreement in excess of 1.5% of the periodic rental amount for any one payment more than 5 days past due;
- K. Require payment by the tenant of a fixed fee for cleaning or otherwise preparing the premises for occupancy of the tenant or a subsequent tenant;
- L. Provide that the tenant purchase goods or services from a specific 3rd party in connection with the tenant's occupancy of the premises;
- M. Permit the landlord to enter the premises without permission of the tenant, except as permitted by law;
- N. Waive or alter the tenant's rights with respect to possession or eviction proceedings or with respect to summary proceedings to recover possession as provided in chapter 709;
- O. Waive or diminish the rights of a tenant in contravention of a law;
- P. Release the landlord from a duty to mitigate damages; or
- Q. Provide that the tenant accept an additional clause, agreement, rule or regulation added to the rental agreement without the knowledge and written consent of the tenant.

3. Voiding of rental agreement. A rental agreement which violates this section may be voided by the tenant upon written notice to the lessor and shall be unenforceable. Subject to subsection 4, a tenant may bring an action and collect as damages against a lessor who violates this section actual damages or an amount equal to the equivalent of 2 months' rent, whichever is greater, plus reasonable attorneys' fees and actual court costs.

4. Attempt by lessor to give notice. If a lessor makes a good faith attempt to give written notice to all tenants subject to a clause, agreement or understanding prohibited by this section, before the commencement of an action pursuant to subsection 3, specifying the prohibited clause, agreement or understanding and stating that it is void and unenforceable, then with respect to that clause, agreement or understanding, the lessor shall be liable only for actual damages sustained by each lessee.

5. Other remedies. The remedies provided by this section are in addition to any other remedies imposed by law.

STATEMENT OF FACT

This bill identifies various unconscionable, exploitative or illegal provisions that are not permitted to be included in residential rental agreements. Very few of the prohibited provisions expand substantive tenant protections under the law. Of the new protections provided, no landlord could seek to impose these provisions in good conscience. The rental provisions prohibited by this bill are not used by reputable landlords.