

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1651

H.P. 1160

House of Representatives, March 22, 2007

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

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HASKELL of Portland.
Cosponsored by Senator MARRACHÉ of Kennebec and
Representatives: BRYANT of Windham, HOLMAN of Fayette, PATRICK of Rumford,
SAVIELLO of Wilton, WAGNER of Lewiston, WEDDELL of Frankfort, Senator:
PLOWMAN of Penobscot.

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

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

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

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

7 **§6039. Surety bonds**

8 The following terms apply to the purchase of surety bonds by tenants of residential
9 dwelling.

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

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

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

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

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

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

36 **4. Notice of rights.** The surety or landlord shall deliver to a tenant a copy of any
37 agreements or documents signed by the tenant at the time of the tenant's purchase of the
38 surety bond. The surety or landlord shall advise the tenant in writing of all of the tenant's

1 rights under this section prior to the purchase of a surety bond. This notice must conform
2 to the requirements of Title 24-A, section 2441, subsection 1.

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

6 A. The surety bond premium is nonrefundable except as provided in subsection 2;

7 B. The surety bond is not insurance for the tenant;

8 C. The surety bond is being purchased to protect the landlord against loss due to, but
9 not limited to, the following: nonpayment of rent, nonpayment of utility charges that
10 the tenant was required to pay directly to the landlord, breach of the rental agreement,
11 storing and disposing of unclaimed property or damages caused by the tenant other
12 than normal wear and tear;

13 D. The tenant may be required to reimburse the surety for amounts the surety paid to
14 the landlord;

15 E. Even after a tenant purchases a surety bond, the tenant remains responsible for
16 payment of:

17 (1) All unpaid rent;

18 (2) Damage due to breach of the rental agreement;

19 (3) Damage by the tenant or members of the tenant's household or their invitees
20 or guests in excess of normal wear and tear to the leased premises, common
21 areas, major appliances or furnishings owned by the landlord;

22 (4) Utility charges that the tenant was required to pay directly to the landlord;
23 and

24 (5) The cost of storing and disposing of unclaimed property;

25 F. The tenant has the right to pay the damages directly to the landlord or require the
26 landlord to use the tenant's security deposit, if any, before the landlord makes a claim
27 against the surety bond; and

28 G. If the surety fails to comply with the requirements of this section, the surety
29 forfeits the right to make any claim against the tenant under the surety bond.

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

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

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

1 make any other payment to a landlord. A surety bond may be used to pay claims by a
2 landlord for:

3 A. Unpaid rent;

4 B. Damage due to breach of the rental agreement;

5 C. Damage by the tenant or members of the tenant's household or their invitees or
6 guests in excess of normal wear and tear to the leased premises, common areas, major
7 appliances or furnishings owned by the landlord;

8 D. Nonpayment of utility charges that the tenant was required to pay directly to the
9 landlord; and

10 E. The cost of storing and disposing of unclaimed property.

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

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

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

38 **10. Action by surety against tenant.** In any proceeding brought by the surety
39 against the tenant on a surety bond under this section, the tenant retains all rights and
40 defenses otherwise available in a proceeding between a tenant and a landlord. Damages
41 may be awarded to the surety only to the extent that the tenant would have been liable to
42 the landlord under this section. If a surety, in an action against the tenant, asserts a claim

1 under the surety bond without having a reasonable basis to assert the claim, the court may
2 grant the tenant damages of up to 3 times the amount claimed plus reasonable attorney's
3 fees and court costs.

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

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

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

19 SUMMARY

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