



Zafar Shah Attorney
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 237
shahz@publicjustice.org

HB 523 - Landlord and Tenant - Repossession for Failure to Pay Rent - Registration and License Information

Hearing before the Senate Judicial Proceedings Committee, March 30, 2021

Position: SUPPORT WITH AMENDMENTS

HB 523 ensures that District Court rent dockets provide no safe harbor for landlords who fail to comply with the local rental licensing laws and the registration requirements of the Maryland Reduction of Lead Risk in Housing law. This bill, as amended and passed in the House, would require landlords to demonstrate that their rental units are licensed, where licensing laws apply, both at the time of filing an eviction action for Failure to Pay Rent and at the time of trial.

However, due to drafting oversights, the bill language inadvertently excludes municipal (as opposed to county) rental licenses. It also falls short of requiring any demonstration of a valid lead inspection certificate.

To effectively bar law-breaking rental operators from the court's eviction process, HB 523 should include **technical amendments** that (1) capture both county *and* municipal rental licenses and (2) expressly require that landlords demonstrate their valid lead inspection certificates at trial.

Public Justice Center's [2015 study *Justice Diverted*](#) showed that landlords easily and routinely use the "Rent Court" process even as they are violating local and state laws by leasing units without having passed inspections and obtained valid rental licenses or lead inspection certificates. In Public Justice Center's study of over 100 contested eviction actions in Baltimore City, over 70 percent of landlords had either omitted rental licensing information from the complaint or provided the court invalid information while **79%** of landlords in study failed to provide valid lead compliance information.¹ And still, over 60 percent of non-compliant landlords won judgments

¹ Public Justice Center, *Justice Diverted: How Renters Are Processed in the Baltimore City Rent Court* 24-25 (2015), http://www.publicjustice.org/wp-content/uploads/2019/09/JUSTICE_DIVERTED_PJC_DEC15.pdf

for eviction. This success rate for law-breaking landlords provides financial incentive to continue operating in violation of local and state laws meant to protect consumers and public safety. Looking at this phenomenon across the state, Maryland Legal Aid found in [a 2016 report](#) that in over 21,000 eviction cases that resulted in default judgments for repossession, the landlord failed to provide any rental licensing information on the court complaint despite not having an exemption from licensing.²

HB 523, with further amendment, will stop rogue landlords from taking advantage of Rent Court and collecting rent illegally under threat of eviction.

In 2004 the General Assembly enacted a “Clean Hands” law requiring all landlords to disclose compliance with the Lead Law in order to file an eviction case in Rent Court. In 2011, the Court of Appeals found that a landlord’s claim in Rent Court is conditioned on the property’s compliance with any applicable rental license.³ Consequently, landlords must state statement compliance with license and lead inspection requirements in paragraphs 2 and 3 of the “Failure to Pay Rent” complaint form. HB 523 does not change the existing requirements by which landlords must state a rental license number, Department of Environment registration number, and lead inspection certificate number. HB 523 is the necessary step to ensure that those averred numbers are legitimate and valid. HB 523 puts the burden on landlords to show valid documentation that supports the averments already required by law. This bill clarifies after years of confusion in the courts that that it is neither the judge nor the tenant who should carry the burden of identifying unlicensed properties or those that failed a lead risk inspection.

Fix HB 523 to ensure the strongest disincentive against illegal rental operations

As amended and passed by the House, HB 523 would create the following changes to the existing summary ejectment procedure:

- At time of filing “Failure to Pay Rent” complaint: The Landlord would present a copy of their rental license and MDE Registration.
- At trial: The Landlord would present only the rental license.
- In neither the filing nor the trial stages would landlords have to present a valid Inspection Certificate (MDE Form 330) to show the property’s current lead risk reduction compliance.

Based on descriptions of HB 523 made by members of the House Judiciary and the House Environment and Transportation committees, we believe that HB 523 is intended to require evidence of compliance with any applicable rental license law, as well as evidence of a valid lead

² Maryland Legal Aid, *Human Rights in Maryland’s Rent Court: A Statistical Study* 24 (2016), https://www.mdlab.org/wp-content/uploads/MDLegalAid_RentCourtStudy_Release-Date-9-8-16.pdf

³ *McDaniel v. Baranowski*, 419 Md. 560, 585 (2011)

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

inspection certificate. Given that HB 523 was heavily amended to adopt provisions from two other House bills (HB 524, HB 49), it is likely that important language was incidentally left on the cutting room floor. Public Justice Center proposes 3 amendments (attached) to ensure that the intent of the bill is clear and that implementation of the bill is not wracked by ambiguous language.

Amendment 1 ensures that the municipal rental licensing is covered by this bill. The current language references county license requirements (page 3, line 33). However, there are municipalities such as Annapolis and College Park that have enacted rental license ordinances apart from their respective counties' laws.

Amendment 2 ensures that the landlord's burden of proof as to lead risk compliance includes both the MDE registration *and* the lead inspection certificate. This is accomplished by changing the reference to "all registration requirements under Title 6, Subtitle 8, Part III of the Environment Article" (page 4, lines 1-3). Part III, as referenced, requires annual registration, without inspection for compliance with the applicable lead risk standard. Part IV of that section of the code specifies the lead inspection requirements and the certificate process for affected properties. Further below in the bill, in the section describing the landlord's burden at trial, the reference to "subsection (b)(2)(i)1" (regarding rental licenses) must be changed to "subsection (b)(2)(i)" so that the burden is inclusive of both the valid rental license and valid lead inspection certificate.

Amendment 3 is a conforming amendment to ensure that the changes to the Real Property article are incorporated into Baltimore City public local law.

HB 523 strengthens the public safety objectives that legislature had in mind when they created the Lead Risk in Housing law and city/county rental license laws. This bill changes the district courts' role from passive bystander to illegal rental operations. Instead, the court process will spotlight illegal activities. It is imperative to deter bad actors who seek special recourse through the courts and to create a meaningful incentive for landlords to comply with laws that protect the public from defective properties.

Please issue a report of FAVORABLE WITH AMENDMENTS on HB 523. If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409 Ext. 237.

MDE Lead Registration vs. Risk Reduction Inspection Certificate

The Inspection Certificate shows compliance with lead safety standards.

MDE Registration does not.

MDE Lead Registration (Environment Art. Title 6, Subtitle 8, Part III)



- Registration is an annual requirement for rental properties built before 1978 (unless property is exempted).
- Registration is not based on any inspection of the property. Property owners pay a fee each year to renew registration.
- To show “Registration requirements under Title 6, Subtitle 8, Part III” of Env. Art., one would submit an invoice for the registration payment or print-out from MDE’s online lead registry – neither of which indicate whether the property complies with lead risk reduction standards.

Lead Inspection Certificate (Environment Art. Title 6, Subtitle 8, Part IV)



- Inspection Certificates (MDE Form 330) state the type of inspection conducted (Full Risk, Modified Risk, Limited Lead Free, Lead Free), whether the property passed/failed, and the date of the inspection.
- Full Risk and Modified Risk inspections are triggered by tenancy-related events: change in occupancy (Full Risk), notice of defect (Modified Risk).
- An Inspection Certificate has a unique 6-digit number – this is distinct for the Tracking ID included in a Registration.
- Sampling of eviction cases in 2005 and 2014 showed that over 70% of cases involved missing or outdated Inspection Certificates information.

By amendment, HB 523 should include language that requires landlords to show the valid Inspection Certificate at filing and at trial.

PROPOSED AMENDMENTS TO HB 523

(Page/line numbers reference third reader of the House bill)

AMENDMENT 1

Page 3, lines 33-34, strike “with the county” and after “requirements” insert “of the local jurisdiction”.

Amendment 1 ensures that the municipal rental licensing is covered by this bill. The current language references county license requirements (page 3, line 33). However, there are municipalities such as Annapolis and College Park that have enacted rental license ordinances apart from their respective counties’ laws.

AMENDMENT 2

Page 4, lines 1-2, after “registration” insert “and inspection certificate,” and after “Part III” insert “and Part IV”;

Page 6, line 8, strike “(b)(2)(i)1” and substitute “(b)(2)(i)”;

Page 6, line 13, strike “copy of the license” and substitute “document”.

Amendment 2 ensures that the landlord’s burden of proof as to lead risk compliance includes both the MDE registration *and* the lead inspection certificate. This is accomplished by changing the reference to “all registration requirements under Title 6, Subtitle 8, Part III of the Environment Article” (page 4, lines 1-3). Part III, as referenced, requires annual registration, without inspection for compliance with the applicable lead risk standard. Part IV of that section of the code specifies the lead inspection requirements and the certificate process for affected properties.

Further below in the bill, in the section describing the landlord’s burden at trial, the reference to “subsection (b)(2)(i)1” (regarding rental licenses) must be changed to “subsection (b)(2)(i)” so that the burden is inclusive of both the valid rental license and valid lead inspection certificate. Additionally, the provision allowing electronic evidence should be changed to cover both licenses and inspection certificates.

AMENDMENT 3

Page 8, line 17, after “Part III” insert “and Part IV”;

Page 8, line 42, after “City Code” insert “and Title 6, Subtitle 8, Part III and Part IV of the Environment Article of the Annotated Code of Maryland”;

Page 9, line 1, after “copy of the license” insert a comma and “registration, or lead inspection certificate”;

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

Page 9, line 4, after “City Code” insert “and Title 6, Subtitle 8, Part III and Part IV of the Environment Article of the Annotated Code of Maryland”.

Amendment 3 is a conforming amendment to ensure that the changes to the Real Property article are incorporated into Baltimore City public local law.