



AN ACT PROHIBITING A FINDING OF UNCONSCIONABILITY BY THE COURT FOR CERTAIN TENANT AND LANDLORD RESPONSIBILITIES; REVISING REQUIREMENTS RELATED TO NONCOMPLIANCE OF TENANTS; AND AMENDING SECTIONS 70-24-404, 70-24-422, 70-24-423, 70-33-403, 70-33-422, AND 70-33-423, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 70-24-404, MCA, is amended to read:

**"70-24-404. Unconscionability -- court discretion to refuse enforcement.** (1) Except as provided in subsection (2), if the court, as a matter of law, finds that:

(a) a rental agreement or any provision ~~thereof~~ of the rental agreement is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental agreement that:

(a) a tenant maintain a dwelling unit in accordance with 70-24-321; or

(b) a landlord maintain the premises in accordance with 70-24-303.

~~(2)(3)~~ (3) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination."

**Section 2.** Section 70-24-422, MCA, is amended to read:

**"70-24-422. Noncompliance of tenant generally -- landlord's right of termination -- damages -- injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance, ~~and that the rental agreement will terminate, and that the tenant shall vacate the premises upon on~~ a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates and the tenant shall vacate the premises as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by ~~repairs, the payment of damages, or otherwise~~ or written approval of the landlord and the tenant ~~adequately~~ remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2) and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured in violation of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3) and the tenant shall vacate the premises if the landlord terminates the rental agreement.

(5) Except as provided in this chapter, the landlord ~~may~~ shall recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord ~~may~~ shall recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(7) The landlord is not bound by this section in the event that the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

**Section 3.** Section 70-24-423, MCA, is amended to read:

**"70-24-423. Waiver of landlord's right to terminate for breach.** Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent. Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right. The acceptance of partial payment of rent due does not constitute a waiver of any right, including rent due."

**Section 4.** Section 70-33-403, MCA, is amended to read:

**"70-33-403. Unconscionability -- court discretion.** (1) ~~ff~~ Except as provided in subsection (2), if the court, as a matter of law, finds that:

(a) a rental agreement or any provision of the rental agreement is unconscionable, the court, in order to avoid an unconscionable result, may refuse to enforce the agreement or may enforce the remainder of the agreement without the unconscionable provision result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court, in order to avoid an unconscionable result, may refuse to enforce the settlement, may enforce the remainder of the settlement without the unconscionable provision, or may limit the application of any unconscionable provision.

(2) A finding pursuant to subsection (1) may not be made based on a responsibility outlined in a rental agreement that:

(a) a tenant maintain a lot in accordance with 70-33-321; or

(b) a landlord maintain the premises in accordance with 70-33-303.

~~(2)~~(3) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must

be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making its determination."

**Section 5.** Section 70-33-422, MCA, is amended to read:

**"70-33-422. Noncompliance of tenant generally -- landlord's right of termination -- damages -- injunction.** (1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-33-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-33-321(3). If the landlord terminates the rental agreement, the tenant shall vacate the premises upon termination of the agreement.

(2) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested or charged with an act that violates the provisions of 70-33-321(4), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-33-321(4). If the landlord terminates the rental agreement, the tenant shall vacate the premises upon termination of the agreement.

(3) Except as otherwise provided in this chapter, the landlord ~~may~~ shall recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-33-321. Except as provided in subsection (4) of this section, if the tenant's noncompliance is purposeful, the landlord ~~may~~ shall recover treble damages.

(4) Treble damages may not be recovered for the tenant's early termination of the tenancy."

**Section 6.** Section 70-33-423, MCA, is amended to read:

**"70-33-423. Waiver of landlord's right to termination.** (1) Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent.

(2) Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right.

(3) The acceptance of partial payment of rent due does not constitute a waiver of any right, including rent due."

**Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

I hereby certify that the within bill,  
SB 0174, originated in the Senate.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

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Secretary of the Senate

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

SENATE BILL NO. 174  
INTRODUCED BY R. WEBB

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