

Amendment No. 521

Assembly Amendment to Assembly Bill No. 313

(BDR 10-912)

Proposed by: Assemblymen Anderson and Conklin**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

RBL/BJE



Date: 4/20/2009

A.B. No. 313—Prohibits excessive late fees in rental agreements. (BDR 10-912)



ASSEMBLY BILL NO. 313—ASSEMBLYMEN PIERCE; ~~HOGAN,~~ BOBZIEN, BUCKLEY,
HORNE, KIHUEN, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MCCLAIN,
MUNFORD AND SEGERBLOM

MARCH 12, 2009

JOINT SPONSOR: SENATOR PARKS

Referred to Committee on Commerce and Labor

SUMMARY—~~[Prohibits excessive late fees in rental agreements.]~~ Makes various changes relating to tenants of property. (BDR 10-912)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to property; limiting the amount of fees a landlord may charge for a late or partial rent payment; revising provisions governing unlawful detainer; extending the period for complying with a notice to quit by certain tenants in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a tenant is obligated to pay periodic rent to a landlord in exchange for use of the premises. A landlord must include, as part of the rental agreement, a provision which sets forth the charges, if any, which may be required for late or partial payment of rent. (NRS 118A.200)

This bill limits the amount of the late fee that may be charged by a landlord for late or partial payment of rent. **Section 1** of this bill provides: (1) for monthly or longer periodic terms, the late fee may not exceed ~~[2]~~ 3 percent of the periodic payment for payments made ~~[5 to 6]~~ 3 to 6 days late, and may not exceed an additional ~~[2]~~ 4 percent of the periodic payment if payment is made ~~[4 to 7]~~ 7 days or more late; (2) for certain weekly periodic terms, the late fee may not exceed ~~[2]~~ 7 percent of the weekly payment for payments made ~~[3 to 6 days late, and may not exceed an additional 3 percent of the weekly payment if payment is made 7 days or more]~~ late; and (3) that a late fee imposed by a landlord may only be imposed once for a late payment ~~[and may not be deducted from a subsequent payment to place the subsequent payment in default.]~~

Existing law specifies when a tenant of real property or a mobile home is guilty of unlawful detainer, including when the tenant: (1) fails to pay his rent; (2) fails to comply with a written notice directing him to either pay the rent or surrender the property; and (3) remains on the property for at least 5 days after the notice is served upon him. (NRS 40.2512) Section 2 of this bill extends the 5-day period to 7 days if the premises are used as a residence.

A tenant of real property is also guilty of unlawful detainer under existing law if he: (1) fails to perform certain conditions of the lease; (2) fails to comply with a written

notice directing him to perform the conditions or surrender the property; and (3) remains on the property for at least 5 days after the notice is served upon him. The tenant or subtenant may save the lease from forfeiture, however, by performing the conditions within 3 days after the notice is served. (NRS 40.2516) Section 3 of this bill extends from 5 to 7 days the period during which a tenant or subtenant of premises that are used as a residence may remain on the property before being guilty of unlawful detainer. Section 3 also extends the period by which such a tenant or subtenant must perform the conditions to save the lease from forfeiture from 3 to 5 days.

Existing law provides that, under certain circumstances, a landlord may obtain an order from the court directing the sheriff to remove a tenant who has failed to pay rent within 24 hours after receiving the order. (NRS 40.253) Section 4 of this bill extends that period if the tenant is in possession of a dwelling, apartment or mobile home or if the rent is reserved by a period of 1 week or less so that the sheriff may not remove the tenant sooner than 2 days after the sheriff receives the order.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 118A of NRS is hereby amended by adding thereto a new section to read as follows:

1. A landlord shall not require, as part of a rental agreement, the tenant to pay a late fee for late or partial payment of rent in excess of the provisions of this section.

2. If the tenancy is from month to month and rent is due in monthly installments or if the tenancy is for a period greater than month to month as established by the rental agreement and the rent is:

(a) At least ~~15~~ 3 days overdue but less than ~~10~~ 7 days overdue, a landlord may charge a late fee not to exceed ~~12~~ 3 percent of the periodic rent.

(b) ~~Ten~~ Seven days or more overdue, a landlord may charge a late fee in addition to the late fee described in paragraph (a) not to exceed ~~13~~ 4 percent of the periodic rent.

3. If the tenancy is from week to week and the rent is ~~14~~

~~(a) At least 3 days overdue but less than 7 days~~ overdue, a landlord may charge a late fee not to exceed ~~12~~ 7 percent of the weekly rent.

~~(b) Seven days or more overdue, a landlord may charge a late fee in addition to the late fee described in paragraph (a) not to exceed 3 percent of the weekly rent.~~ As used in this subsection, "tenancy" does not include occupancy of any transient lodging for less than 30 consecutive calendar days.

4. If the rent is subsidized by the United States Department of Housing and Urban Development, the United States Department of Agriculture, a state agency, a public housing authority or a local government, any late fee charged by a landlord must be calculated in accordance with the provisions of this section on the tenant's share of the rent and the rent subsidy must not be included in the calculation.

5. If a late fee is imposed under this section, a landlord may only impose the late fee once for each late or partial payment. ~~A landlord may not deduct a late fee from a subsequent rental payment and cause the subsequent rental payment to be in default.~~

6. Any provision of a rental agreement prohibited by this section is void as contrary to public policy and the tenant may recover any actual damages incurred through the inclusion of the prohibited provision.

Sec. 2. NRS 40.2512 is hereby amended to read as follows:

40.2512 A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing, requiring in the alternative the payment of the rent or the surrender of the detained premises, remains uncomplied with for a period of 5 days, or in the case of ~~mobile home lot, lot~~ premises used as a residence, 7 days after service thereof. The notice may be served at any time after the rent becomes due.

Sec. 3. NRS 40.2516 is hereby amended to read as follows:

40.2516 A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in NRS 40.250 to 40.252, inclusive, and NRS 40.254, and after notice in writing, requiring in the alternative the performance of the condition or covenant or the surrender of the property, served upon him, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplied with for 5 days or, when the premises are used as a residence, for 7 days after the service thereof. Within 3 days after the service, or within 5 days after the service when the premises are used as a residence, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform the condition or covenant and thereby save the lease from forfeiture; but if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice need be given.

Sec. 4. NRS 40.253 is hereby amended to read as follows:

40.253 1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or his agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

As used in this subsection, "day of service" means the day the landlord or his agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or his agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or his agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of NRS

40.280. The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when he took possession of the premises, that the landlord or his agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or his agent.

3. A notice served pursuant to subsection 1 or 2 must:

(a) Identify the court that has jurisdiction over the matter; and

(b) Advise the tenant of his right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an affidavit with the court that has jurisdiction over the matter stating that he has tendered payment or is not in default in the payment of the rent.

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or his agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.

5. Upon noncompliance with the notice:

(a) The landlord or his agent may apply by affidavit of complaint for eviction to the Justice Court of the township in which the dwelling, apartment, mobile home or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. ~~{The}~~ *If the tenant is in possession of commercial premises, the* court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. *If the tenant is in possession of a dwelling, apartment or mobile home or if the rent is reserved by a period of 1 week or less, the court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant not sooner than 2 days after receipt of the order.* The affidavit must state or contain:

(1) The date the tenancy commenced.

(2) The amount of periodic rent reserved.

(3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.

(4) The date the rental payments became delinquent.

(5) The length of time the tenant has remained in possession without paying rent.

(6) The amount of rent claimed due and delinquent.

(7) A statement that the written notice was served on the tenant in accordance with NRS 40.280.

(8) A copy of the written notice served on the tenant.

(9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or his agent, and except when the landlord is prohibited pursuant to NRS 118A.480, the landlord or his agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the Justice Court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that ~~{there}~~:

(a) There is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal

of the tenant or an order providing for the nonadmittance of the tenant. ~~[If the court determines that there]~~

(b) There is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief ~~[and]~~ and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive.

↪ The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which he may be entitled. If the alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with NRS 40.251.

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to NRS 118A.460 for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

(a) The tenant has vacated or been removed from the premises; and

(b) A copy of those charges has been requested by or provided to the tenant,

↪ whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

(a) Determine the costs, if any, claimed by the landlord pursuant to NRS 118A.460, and any accumulating daily costs; and

(b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or his agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in NRS 118A.240.

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215.

Sec. 5. The provisions of section 1 of this act apply only to a rental agreement entered into on or after July 1, 2009.

~~[Sec. 2.]~~ Sec. 6. This act becomes effective on July 1, 2009.