

## SENATE SUBSTITUTE TO HB 834:

**AS PASSED SENATE**

## A BILL TO BE ENTITLED

## AN ACT

1 To amend Code Section 19-13-3 and Chapter 7 of Title 44 of the Official Code of Georgia  
 2 Annotated, relating to filing of petition seeking relief from family violence, granting of  
 3 temporary relief ex parte, hearing, dismissal of petition upon failure to hold hearing, and  
 4 procedural advice for victims, and landlord and tenant, respectively, so as to clarify matters  
 5 concerning the effect of a temporary ex parte order and the length of time it is effective; to  
 6 provide for the termination of a residential rental agreement under circumstances involving  
 7 family violence; to provide for definitions; to provide for notice and terms of termination;  
 8 to provide for applicability; to revise the procedures between the landlord and tenant for the  
 9 listing of damages before and after a tenancy; to clarify provisions relating to the return of  
 10 a security deposit and actions related thereto; to provide for related matters; to repeal  
 11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

13 Code Section 19-13-3 of the Official Code of Georgia Annotated, relating to filing of petition  
 14 seeking relief from family violence, granting of temporary relief ex parte, hearing, dismissal  
 15 of petition upon failure to hold hearing, and procedural advice for victims, is amended by  
 16 revising subsections (b) and (c) as follows:

18 "(b) Upon the filing of a verified petition in which the petitioner alleges with specific facts  
 19 that probable cause exists to establish that family violence has occurred in the past and may  
 20 occur in the future, the court may order such temporary relief ex parte as it deems  
 21 necessary to protect the petitioner or a minor of the household from violence. If the court  
 22 issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner  
 23 and such order shall remain in effect until the court issues an order dismissing such order  
 24 or a hearing as set forth in subsection (c) of this Code section occurs, whichever occurs  
 25 first.

26 (c) Within ten days of the filing of the petition under this article or as soon as practical  
 27 thereafter, but ~~in no case~~ not later than ~~30~~ 30 days after the filing of the petition, a hearing

28 shall be held at which the petitioner must prove the allegations of the petition by a  
 29 preponderance of the evidence as in other civil cases. In the event a hearing cannot be  
 30 scheduled within the county where the case is pending within the ~~30~~ 30 day period the  
 31 same shall be scheduled and heard within any other county of that circuit. If a hearing is  
 32 not held within ~~30~~ 30 days of the filing of the petition, the petition shall stand dismissed  
 33 unless the parties otherwise agree.

34 (d) If the Court finds a party is avoiding service to delay a hearing, the Court may delay  
 35 dismissal of the petition for an additional 30 days."

## 36 SECTION 2.

37 Chapter 7 of Title 44 of the Official Code of Georgia Annotated, relating to landlord and  
 38 tenant, is amended in Article 1, relating to general provisions, by adding a new Code section  
 39 to read as follows:

40 "44-7-23.

41 (a) As used in this Code section, the term:

42 (1) 'Civil family violence order' means:

43 (A) Any protective order issued pursuant to Article 1 of Chapter 13 of Title 19,  
 44 provided that the respondent was present or had notice of the hearing that resulted in  
 45 the issuance of such order; or

46 (B) Any ex parte temporary protective order issued pursuant to Article 1 of Chapter 13  
 47 of Title 19, provided that it is accompanied by a police report showing a basis for such  
 48 order.

49 (2) 'Criminal family violence order' means:

50 (A) Any order of pretrial release issued as a result of an arrest for an act of family  
 51 violence; or

52 (B) Any order for probation issued as a result of a conviction or plea of guilty, nolo  
 53 contendere, or first offender to an act of family violence.

54 (3) 'Family violence' shall have the same meaning as set forth in Code Section 19-13-1.

55 (b) A tenant may terminate his or her residential rental or lease agreement for real estate  
 56 effective 30 days after providing the landlord with a written notice of termination when a  
 57 civil family violence order or criminal family violence order has been issued:

58 (1) Protecting such tenant or his or her minor child; or

59 (2) Protecting such tenant when he or she is a joint tenant, or his or her minor child, even  
 60 when such protected tenant had no obligation to pay rent to the landlord.

61 (c) The notice to the landlord pursuant to subsection (b) of this Code section shall be  
 62 accompanied by a copy of the applicable civil family violence order or criminal family

63 violence order and a copy of the police report if such order was an ex parte temporary  
 64 protective order.

65 (d) Upon termination of a residential rental or lease agreement under this Code section, the  
 66 tenant may occupy the real estate until the termination is effective. Such tenant shall be  
 67 liable for the rent due under such agreement prorated to the effective date of the  
 68 termination, payable at such time as would have otherwise been required by the terms of  
 69 such agreement, and for any delinquent or unpaid rent or other sums owed to the landlord  
 70 prior to the termination of such agreement. The tenant shall not be liable for any other fees,  
 71 rent, or damages due to the early termination of the tenancy as provided for in this Code  
 72 section. Notwithstanding any provision of law to the contrary, if a tenant terminates a  
 73 residential rental or lease agreement pursuant to this Code section 14 or more days prior  
 74 to occupancy, no damages or penalties of any kind will be assessable.

75 (e) This Code section shall apply to all residential real estate rental or lease agreements  
 76 entered into on or after July 1, 2018, and to any renewals, modifications, or extensions of  
 77 such agreements in effect on such date. This Code section shall not be waived or modified  
 78 by the agreement of the parties under any circumstances."

79 **SECTION 3.**

80 Said chapter is further amended by revising Code Sections 44-7-33 through 44-7-35, relating  
 81 to lists of existing defects and of damages during tenancy, right of tenant to inspect and  
 82 dissent, action to recover security deposit, return of security deposit, grounds for retention  
 83 of part, delivery of statement and sum due to tenant, unclaimed deposit, court determination  
 84 of disposition of deposit, and remedies for landlord's noncompliance with article,  
 85 respectively, as follows:

86 "44-7-33.

87 (a) Prior to tendering a security deposit, the tenant shall be presented with a  
 88 comprehensive list of any existing damage to the premises; which list shall be for the  
 89 tenant's permanent retention. The tenant shall have the right to inspect the premises to  
 90 ascertain the accuracy of ~~the~~ such list prior to taking occupancy. The landlord and the  
 91 tenant shall sign the list, and this shall be conclusive evidence of the accuracy of the list but  
 92 shall not be conclusive as to latent defects. If the tenant refuses to sign the list, the tenant  
 93 shall state specifically in writing the items on ~~the~~ such list to which he or she dissents and  
 94 shall sign such statement of dissent.

95 (b)(1) Within three business days after the ~~date of the termination of occupancy~~  
 96 termination of the residential lease and vacation of the premises or the surrender and  
 97 acceptance of the premises, whichever occurs first, the landlord or his or her agent shall  
 98 inspect the premises and compile a comprehensive list of any damage done to the

99 premises which is the basis for any charge against the security deposit and the estimated  
 100 dollar value of such damage. The tenant shall upon request have the right to inspect the  
 101 premises and such list within five business days after the termination of the ~~occupancy~~  
 102 ~~in order to ascertain the accuracy of the list. residential lease and vacation of the premises~~  
 103 or the surrender and acceptance of the premises and the inspection by the landlord or his  
 104 or her agent. If the tenant is present with the landlord at the time of the inspection, the  
 105 ~~The~~ landlord and the tenant shall sign the list, and this shall be conclusive evidence of the  
 106 accuracy of the list. If the tenant refuses to sign the list, he or she shall state specifically  
 107 in writing the items on the list to which he or she dissents and shall sign such statement  
 108 of dissent. The landlord shall then comply with the provisions of Code Section 44-7-34.  
 109 (2) If the tenant ~~terminates occupancy~~ vacates or surrenders the premises without  
 110 notifying the landlord, the landlord may shall inspect the premises and compile a  
 111 comprehensive list of any damage done to the premises which is the basis for any charge  
 112 against the security deposit and the estimated dollar value of such damage make a final  
 113 inspection within a reasonable time after discovering the ~~termination of occupancy~~  
 114 premises has been surrendered by vacancy. The landlord shall sign the list and then  
 115 comply with the provisions of Code Section 44-7-34.

116 (c) A tenant who disputes the accuracy of the final damage list ~~given~~ compiled pursuant  
 117 to subsection (b) of this Code section and provided to the tenant pursuant to Code Section  
 118 44-7-34 may bring an action in any court of competent jurisdiction in this state to recover  
 119 the portion of the security deposit which the tenant believes to be wrongfully withheld for  
 120 damages to the premises. The tenant's claims shall be limited to those items to which the  
 121 tenant specifically dissented in accordance with this Code section. If the tenant is present  
 122 for the inspection of the premises after vacancy and signs the landlord's final damage list  
 123 or fails to sign a list or to dissent specifically in accordance with this Code section, the  
 124 tenant shall not be entitled to recover the security deposit or any other damages under Code  
 125 Section 44-7-35, provided that the lists required under this Code section contain written  
 126 notice of the tenant's duty to sign or to dissent to the list. A tenant who did not inspect the  
 127 premises after vacancy or was not present for the landlord's inspection of the premises after  
 128 vacancy and, in either case, did not request a copy of the landlord's final damage list shall  
 129 have the right to dispute the damages assessed by the landlord.

130 44-7-34.

131 (a) ~~Except as otherwise provided in this article, within one month~~ Within 30 days after the  
 132 ~~termination of the residential lease or the surrender and acceptance~~ obtaining possession  
 133 of the premises as provided in subsection (b) of Code Section 44-7-33, whichever occurs  
 134 ~~fast~~, a landlord shall return to the tenant the full security deposit which was deposited with

135 the landlord by the tenant. No security deposit shall be retained to cover ordinary wear and  
 136 tear which occurred as a result of the use of the premises for the purposes for which the  
 137 premises were intended, provided that there was no negligence, carelessness, accident, or  
 138 abuse of the premises by the tenant or members of his or her household or their invitees or  
 139 guests. In the event that actual cause exists for retaining any portion of the security  
 140 deposit, the landlord shall provide the tenant with a written statement listing identifying the  
 141 exact reasons for the retention thereof, which shall include the comprehensive list of  
 142 damages prepared as required by Code Section 44-7-33, if ~~if~~ the reason for retention is  
 143 based on damages to the premises, ~~such damages shall be listed as provided in Code~~  
 144 ~~Section 44-7-33.~~ When the such statement is delivered, it shall be accompanied by a  
 145 payment of the difference between any sum deposited and the amount retained. The  
 146 landlord shall be deemed to have complied with this Code section by mailing the such  
 147 statement and any payment required to the last known address of the tenant via ~~first class~~  
 148 first-class mail. If the letter containing the payment is returned to the landlord undelivered  
 149 and if the landlord is unable to locate the tenant after reasonable effort, the payment shall  
 150 become the property of the landlord 90 days after the date the payment was mailed.  
 151 Nothing in this Code section shall preclude the landlord from retaining the security deposit  
 152 for nonpayment of rent or of fees for late payment, for abandonment of the premises, for  
 153 nonpayment of utility charges, for repair work or cleaning contracted for by the tenant with  
 154 third parties, for unpaid pet fees, or for actual damages caused by the tenant's breach,  
 155 provided that the landlord attempts to mitigate the actual damages.

156 (b) In any court action in which there is a determination that neither the landlord nor the  
 157 tenant is entitled to all or a portion of a security deposit under this article, the judge or the  
 158 jury, as the case may be, shall determine what would be an equitable disposition of the  
 159 security deposit; and the judge shall order the security deposit paid in accordance with such  
 160 disposition.

161 44-7-35.

162 (a) A landlord shall not be entitled to retain any portion of a security deposit if ~~the~~:

163 (1) The security deposit was not deposited in an escrow account in accordance with Code  
 164 Section 44-7-31 or a surety bond was not posted in accordance with Code Section  
 165 44-7-32; ~~and if the~~

166 (2) The initial ~~and final~~ damage ~~lists~~ list required by subsection (a) of Code Section  
 167 44-7-33 ~~are~~ was not made and ~~provided~~ presented to the tenant as required by such  
 168 subsection; and

169 (3) The final damage list required by subsection (b) of Code Section 44-7-33 was not  
 170 compiled and made available to the tenant as required by such subsection.

171 (b) The failure of a landlord to provide ~~each of the lists and~~ written statements within the  
172 time periods specified in Code ~~Sections 44-7-33 and~~ Section 44-7-34 shall work a  
173 forfeiture of all ~~his~~ the landlord's rights to withhold any portion of the security deposit or  
174 to bring an action against the tenant for damages to the premises.

175 (c) Any landlord who fails to return any part of a security deposit which is required to be  
176 returned to a tenant pursuant to this article shall be liable to the tenant in the amount of  
177 three times the sum improperly withheld plus reasonable attorney's fees; provided,  
178 however, that the landlord shall be liable only for the sum erroneously withheld if the  
179 landlord shows by the preponderance of the evidence that the withholding was not  
180 intentional and resulted from a bona fide error which occurred in spite of the existence of  
181 procedures reasonably designed to avoid such errors."

182

**SECTION 4.**

183 All laws and parts of laws in conflict with this Act are repealed.