



SPONSOR: Sen. Townsend & Sen. Pinkney & Rep. Minor-Brown & Rep. K. Johnson & Rep. Lambert
Sens. Gay, Lockman, S. McBride, Poore; Reps. Baumbach, Bentz, Kowalko, Longhurst, Morrison, Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 101

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE RESIDENTIAL LANDLORD-TENANT CODE.

1 WHEREAS, approximately 18,000 eviction cases are filed each year in this State with only 101,000 rental
2 households; and

3 WHEREAS, evictions create significant costs for state and local government related to shelter funding, education
4 funding, health care provided in hospitals instead of community-based providers, transportation costs for homeless youth,
5 and foster care; and

6 WHEREAS, a University of Delaware Biden School of Public Policy study of eviction actions in Delaware found
7 that while only 2% of tenants are represented in eviction proceedings, approximately 86% of landlords are represented by
8 an attorney, property manager, or agent in eviction proceedings; and

9 WHEREAS, the Delaware Access to Justice Commission has found that “Legal aid organizations have the
10 resources to serve the civil legal needs of only one-eighth of Delaware’s low-income population, leaving a large justice
11 gap”; and

12 WHEREAS, numerous studies from around the country have shown that many tenants have defenses to the
13 eviction that they are not able to assert, either at all or successfully, without the assistance of counsel; and

14 WHEREAS, evictions have a disparate impact on Black and Latinx households in this State; and

15 WHEREAS, Black and Latinx tenants have been disproportionately impacted by COVID-19 itself, which has
16 caused a cascade effect on incomes and the subsequent ability to pay rent, as shown in the Census Household Pulse Survey
17 data; and

18 WHEREAS, the General Assembly seeks to end the disparate impact of evictions based on race and gender; and

19 WHEREAS, evictions have significant, well-documented, and long-lasting effects on the lives of individuals and
20 families, including poorer physical and mental health, increased risk of homelessness, increased risk of employment loss,
21 loss of personal property, damage to credit standing, and relocation into substandard housing; and

22 WHEREAS, evictions, and the subsequent housing instability and displacement, damage the lives of children by
23 negatively impacting their mental and physical health, decreasing school attendance rates, impeding academic performance,
24 increasing instances of school discipline, and increasing the likelihood of out of home placement; and

25 WHEREAS, evictions exacerbate the public health crisis posed by COVID-19, as recognized by the Centers for
26 Disease Control and Prevention in issuing the Temporary Halt in Residential Evictions to Prevent the Further Spread of
27 COVID-19 Order, by forcing many into close quarters with others in a “doubling up” scenario or in crowded homeless
28 shelters; and

29 WHEREAS, evictions have been proven to increase COVID-19 infection and mortality rates; and

30 WHEREAS, providing a right to counsel to tenants in eviction cases is a proven means of significantly reducing
31 the disruptive displacement of families and the resulting social, economic, and public health costs of such displacement;
32 and

33 WHEREAS, tenants must be able to invoke and enforce the right to legal representation in any eviction-related
34 proceeding to provide for equal access to justice and the courts; and

35 WHEREAS, the General Assembly declares that tenants facing an eviction from their home have a right to legal
36 representation in eviction proceedings and related matters, and that the State should provide this legal representation to
37 tenants to assist in the fair administration of justice.

38 NOW, THEREFORE:

39 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

40 Section 1. Amend Part III, Title 25 of the Delaware Code by making deletions as shown by strike through and
41 insertions as shown by underline as follows:

42 Chapter 56. Right to Legal Representation in Evictions and Other Landlord-Tenant Actions.

43 § 5601. Definitions.

44 For purposes of this chapter:

45 (1) “Coordinator” means the Right to Counsel Coordinator.

46 (2) “Covered individual” means a tenant whose household income is not greater than 200% of the federal
47 poverty guidelines, as established and updated periodically by the United States Department of Health and Human
48 Services.

49 (3) “Covered proceeding” means any of the following:

50 a. A judicial or administrative proceeding to evict, terminate the tenancy of, or terminate the housing
51 subsidy of a covered individual.

52 b. A proceeding deemed by a designated organization as the functional equivalent of a proceeding
53 described in paragraph (3)a. of this section.

54 c. A judicial or administrative proceeding to remedy a violation of law related to landlord-tenant matters,
55 such as retaliatory actions, security deposits, habitability, illegal eviction, or violation of quiet use and enjoyment.

56 (4) “Designated community group” means a nonprofit community organization or association designated by
57 the Coordinator that has the capacity to conduct tenant outreach, engagement, and education regarding this chapter.

58 (5) “Designated organization” means a nonprofit entity designated by the Coordinator that has the ability to
59 provide legal representation to covered individuals.

60 (6)a. “Legal representation” means ongoing high-quality representation provided by a designated organization
61 to a covered individual, and all legal advice, advocacy, and assistance associated with that representation.

62 b. “Legal representation” includes all of the following:

63 1. The filing of a notice of appearance on behalf of the covered individual in a covered proceeding.

64 2. Representation of covered individuals by non-attorneys, if the Rules of the Supreme Court are
65 amended to permit the representation.

66 § 5602. Right to legal representation.

67 (a) A covered individual has the right to legal representation as provided under this chapter.

68 (b) A covered individual is entitled to receive legal representation from a designated organization in a covered
69 proceeding and as soon as practicable after any of the following:

70 (1) A landlord provides notice to terminate or not renew a tenancy.

71 (2) A landlord provides a notice to the tenant under §§ 5502 or 5513 of this title that rent is due or that the
72 tenant has violated a provision of the lease.

73 (3) The initiation of an eviction proceeding.

74 (4) The covered individual has been notified that the covered individual’s housing subsidy has been
75 terminated.

76 (5) The determination by a designated organization that a proceeding arising from the landlord-tenant
77 relationship on behalf of a covered individual should be initiated.

78 (c) Legal representation must be provided by the time of a covered individual's first scheduled appearance in a
79 covered proceeding. If a covered individual appears in a judicial or administrative proceeding for the first scheduled
80 appearance without legal representation, the court or administrative body shall inform the covered individual of the right to
81 and availability of legal representation and may continue the hearing to the soonest available date in the interest of justice to
82 allow the covered individual to seek legal representation.

83 (d) A covered individual shall receive legal representation unless the individual is ineligible, there is a conflict of
84 interest, or other circumstances make legal representation infeasible to render. Circumstances in which a designated
85 organization may decline representation include all of the following:

86 (1) A covered individual does not comply with the application or representation process.

87 (2) Rules of professional conduct warrant withdrawal.

88 (3) Appeals deemed by the attorney to lack merit.

89 (e) The rights in this section are subject to, and qualified by, the availability of legal representation under § 5605
90 of this title and the implementation period under § 5608 of this title. An individual does not have a cause of action against
91 the Coordinator or designated organization based on the unavailability of legal representation.

92 § 5603. Right to Counsel Coordinator.

93 (a) The Attorney General shall appoint a Coordinator to manage the contract for all covered individuals to receive
94 legal representation under this chapter.

95 (b) The Coordinator may adopt rules and regulations necessary to implement this chapter.

96 § 5604. Outreach, engagement, and education.

97 The Coordinator shall conduct outreach, engagement, and education events and activities regarding the rights in
98 this chapter and may enter into contracts or issue grants to fulfill the Coordinator's duty under this section. Subject to the
99 availability of appropriate funding, the education events and activities must include all of the following:

100 (1) Hosting, including virtually, know-your-rights trainings and other workshops for tenants.

101 (2) Distributing written information to tenants.

102 (3) Outreach to tenants regarding how to form and maintain tenant associations.

103 (4) Referring tenants to designated organizations as appropriate.

104 § 5605. Designated organizations.

105 (a) The Coordinator, with appropriate funding from the General Assembly, shall designate and contract with one
106 or more designated organizations to provide the services required under this chapter and shall provide each designated
107 organization contracted with under this chapter with fair and just compensation to allow each designated organization to

108 provide an organizational structure with appropriate supervision, caseloads, and oversight of staff and service delivery to
109 promote high quality legal representation and legal work.

110 (b) Not later than August 31 of each year, each designated organization shall report to the Coordinator information
111 on services provided in conformity with requirements developed by the Coordinator.

112 § 5606. Annual report.

113 (a) Not later than November 30 of each year, the Coordinator shall prepare a report, which must include
114 information from the prior fiscal year regarding all of the following:

115 (1) The number of covered individuals served.

116 (2) The extent of legal representation performed.

117 (3) Metrics on evaluating outcomes.

118 (4) The engagement and education of tenants.

119 (5) The Justice of the Peace Court's experience with the process.

120 (b) The annual report must be posted on the Attorney General's website.

121 § 5607. Additional required disclosures.

122 A landlord or housing authority, as defined under § 4301 of Title 31, shall provide a tenant with an informational
123 brochure approved by the Coordinator that explains legal representation available to tenants, including a right to
124 representation under this chapter, and identifies available resources. The brochure must be provided by the landlord or
125 housing authority at all of the following events:

126 (1) On signing a written rental agreement or entering into a rental agreement that is oral.

127 (2) When a tenant is notified of the termination of a rental agreement.

128 (3) When a tenant receives notice of the termination of a housing subsidy.

129 § 5608. Implementation.

130 (a) The Coordinator shall phase in, over a period of time not to exceed 3 years from [the effective date of this Act],
131 in a manner that the Coordinator determines appropriate, the legal representation required to be provided under § 5602(d) of
132 this title.

133 (b) The Coordinator shall consider all of the following in determining how services are prioritized during the
134 implementation period:

135 (1) Prioritizing households that include a child or pregnant woman.

136 (2) Prioritizing households with household income below 100% of federal poverty guidelines.

137 (3) Prioritizing targeted zip codes with high eviction rates.

138 (4) The availability of funding.

139 (5) The availability of trained and qualified attorneys to provide legal representation.

140 (6) Any other appropriate consideration.

141 Section 2. Amend § 5502, Title 25 of the Delaware Code by making deletions as shown by strike through and
142 insertions as shown by underline as follows:

143 § 5502. Landlord remedies for failure to pay rent.

144 (a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date
145 the rent is due and the date under this Code when late fees may be imposed, demand payment ~~thereof~~ of rent and notify the
146 tenant in writing that unless payment is made within a time mentioned in ~~such~~ the notice, to be not less than 5 days after the
147 date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may,
148 after completing an eviction diversion program under § 5702A of this title, where required, thereafter bring an action for
149 summary possession of the dwelling unit or any other proper proceeding, ~~action~~ action, or suit for possession. An action for
150 possession based on unpaid rent may not be brought if the amount of rent owed is less than 1-month's rent or less than
151 \$500, whichever is greater.

152 (b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has
153 demanded payment of past-due rent and has notified the tenant of the landlord's intention to bring ~~such an~~ the action. This
154 action may include late charges, which have accrued as additional rent.

155 (c) If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord
156 accepts ~~such payment without a written reservation of rights,~~ the payment, the landlord may not then initiate an action for
157 summary possession ~~or~~ for failure to pay rent.

158 (d) If a tenant pays all rent due after the landlord has initiated an action for nonpayment or late payment of rent
159 against the tenant and the landlord accepts ~~such payment without a written reservation of rights,~~ the payment, then the
160 landlord may not maintain that action for past due rent.

161 (e)(1) Subject to paragraph (e)(2) of this section, in an action for summary possession of the dwelling unit for
162 failure to pay rent where the landlord is awarded a judgment of possession, the tenant has the right to redemption of the
163 premises by tendering all past due amounts as determined by the court, plus all court awarded costs and fees, by cash,
164 certified check, cashier's check, money order, or any other form of payment otherwise permitted under the rental agreement
165 to the landlord or the landlord's agent. The tenant's right of redemption applies at any time before the writ of possession is
166 posted. After the landlord or landlord's agent has received the payment, the landlord or landlord's agent shall immediately

167 notify the court and constable or sheriff to which the writ of possession was directed and make all reasonable efforts to
168 prevent execution of the judgement.

169 (2) This subsection does not apply to any tenant against whom 3 judgments of possession have been entered
170 for rent due and unpaid in the 24 months before the initiation of the action to which this subsection otherwise would
171 apply.

172 Section 3. Amend Chapter 57, Title 25 of the Delaware Code by making deletions as shown by strike through and
173 insertions as shown by underline as follows:

174 § 5702A. Residential eviction diversion program.

175 (a)(1) Not later than 270 days after [the effective date of this Act], or as soon as possible after the Centers for
176 Disease Control and Prevention lifts the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-
177 19 issued under Section 361 of the Public Health Service Act, 42 U.S.C. § 264 and 42 C.F.R § 70.2 on March 28, 2021, the
178 Justice of the Peace Court or the Court's designee shall establish a residential eviction diversion program to facilitate a pre-
179 eviction dispute resolution between landlords and tenants, which must include all of the following:

180 a. A conciliation conference between a landlord and tenant to facilitate an agreement for asserted rental
181 agreement violations or non-payment of rent.

182 b. A designated United State Housing and Urban Development certified housing counselor or other
183 representative approved by the Justice of the Peace Court or the Court's designee for the tenant that does all of the
184 following:

185 1. Participates in the conciliation conference.

186 2. Engages with the tenant before the conciliation conference to educate and discuss available
187 resources.

188 c. Any other dispute resolution methods established under the residential eviction diversion program.

189 (2) The Justice of the Peace Court or the Court's designee may limit or otherwise modify the scope of services
190 provided by the residential eviction diversion program to ensure that the cost of the program does not exceed the
191 funding allocated to the program and to ensure that the number of staff required to run the program does not exceed the
192 number of staff available.

193 (b) In designing and implementing the residential eviction diversion program, the Justice of the Peace Court or the
194 Court's designee may be guided by the Residential Mortgage Foreclosure Mediation Program established by the Superior
195 Court under Superior Court Administrative Directive 2013-2 and any subsequent changes made by Superior Court.

196 (c) Beginning not later than when the Justice of the Peace Court or the Court's designee has established a
197 residential eviction diversion program, a landlord may not file an action under this chapter in furtherance of recovering
198 possession of a rental unit occupied by a tenant without first completing the residential eviction diversion program, unless
199 one or more of the following requirements is met:

200 (1) In a proceeding under § 5115, § 5513(b), or § 5513(c) of this title, the landlord alleges and by substantial
201 evidence demonstrates to the Court that a tenant has caused or threatens substantial or irreparable harm to landlord's or
202 other tenant's person or property.

203 (2) The landlord meets both of the following:

204 a. The landlord has provided the affected tenant notice of the tenant's rights under this chapter and
205 Chapter 56 of this title, and how to exercise these rights.

206 b. The landlord has registered with the residential eviction diversion program, 30 days have passed both
207 from the date the landlord provided the required notice of tenants' rights and the landlord properly registered with
208 the residential eviction diversion program, and the tenant has not engaged in the residential eviction diversion
209 program.

210 Section 4. On expiration or nonrenewal of Paragraph E.1. of the Twenty-Seventh Modification of the Declaration
211 of a State of Emergency for the State of Delaware Due to a Public Health Threat, in any case where a final judgement was
212 reached but subsequently explicitly stayed pursuant to an interest of justice finding, a landlord continuing to seek summary
213 possession must file a motion requesting the court to issue the writ of possession, which may only be issued if the court
214 determines it is in the interest of justice to do so.

215 Section 5. If any provision of this Act or the application of this Act to any person or circumstance is held invalid,
216 the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given
217 effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

218 Section 6. Sections 1, 2, 4, 5, and 8 of this Act take effect 120 days after its enactment into law.

219 Section 7. Section 3 of this Act takes effect on the date of publication in the Register of Regulations of a notice by
220 the Controller General that funds are appropriated to implement Section 3 of this Act. The Controller General shall provide
221 notice to the Registrar of Regulations that the funds were appropriated. Until Section 3 of this Act takes effect, the Justice
222 of the Peace Court shall adapt its Online Dispute Resolution program to function as a mandatory mediation process to
223 facilitate pre-eviction dispute resolution between landlords and tenants.

224 Section 8. The Right to Counsel Coordinator shall provide the General Assembly with a copy of the first annual
225 report due under § 5606 of Title 25 of the Delaware Code to determine if additional funding is needed to address the fiscal
226 impact of this Act on the Justice of the Peace Court.

SYNOPSIS

This Act is a substitute for Senate Bill No. 101. Like Senate Bill No. 101, this Substitute creates a right to counsel for tenants in evictions and other landlord-tenant actions. Approximately 18,000 eviction cases are filed each year in the State of Delaware, and while 86% of landlords are represented by an attorney, agent, or business manager, only 2% of tenants have representation.

The disruptive displacement that accompanies eviction proceedings create significant costs for state and local government related to shelter funding, education funding, health care provided in hospitals instead of community-based providers, transportation costs for homeless youth, and foster care. Evictions and disruptive displacement also have significant, well-documented, and long-lasting effects on the lives of individuals and families, including poorer physical and mental health, increased risk of homelessness, increased risk of employment loss, loss of personal property, damage to credit standing, and relocation into substandard housing. Further, evictions fall disproportionately on Black and Latinx families, who have also been the hardest hit by the COVID-19 crisis.

Section 1 of this Act establishes a right to counsel for covered individuals with household income below 200% of the federal poverty guideline for evictions and other landlord-tenant actions. A Coordinator for the program will be appointed by the Attorney General. The Coordinator will contract with legal services providers for the provision of representation in proceedings covered by this Act. Section 1 also requires the Coordinator to work with community organizations to do outreach and education regarding the right to counsel. And, landlords must provide notice of the right to counsel at periodic designated intervals in the tenancy and in eviction proceedings.

Section 2 of this Act creates a monetary floor for initiation of eviction proceedings for nonpayment of rent – no action may be filed where the amount of rent owed is 1-month’s rent or less than \$500, whichever is greater. It also provides that a landlord may not initiate or continue eviction proceedings for nonpayment of rent if the tenant pays and the landlord accepts all rent due. Finally, it creates a right of redemption for a tenant who pays all back rent, costs, and fees before eviction.

Section 3 of this Act authorizes the creation of a residential eviction diversion program modeled after the Residential Mortgage Foreclosure Mediation Program.

Section 4 of this Act provides COVID-19-specific relief in an action where execution was stayed based on a finding that the stay was required in the interests of justice.

Section 5 of this Act is a severability clause.

This Substitute differs from Senate Bill No. 101 as it does all of the following:

(1) Includes representation by non-attorneys in the definition of “legal representation”, if the Rules of the Supreme Court are amended to permit the representation.

(2) Removes the provision for representation in proceedings related to the reduction of a housing subsidy.

(3) Makes clear that legal representation is provided as it is available and that an individual does not have a cause of action if it is not available.

(4) Provides examples of circumstances in which a designated organization may decline representation.

(5) Provides that the Right to Counsel Coordinator (“Coordinator”), with appropriate funding from the General Assembly, shall contract with designated organizations to provide the services required under the Act.

(6) Requires the Coordinator to include the Justice of the Peace Court’s experience with the Act in the Coordinator’s annual report.

(7) Removes events that require a landlord to provide a tenant with a brochure about legal representation available to tenants.

(8) Makes technical changes to make clear that an action for possession based on unpaid rent may not be brought if the amount of rent owed is less than 1-month’s rent or less than \$500, whichever is greater.

(9) Changes the time for the application of the tenant’s right of redemption to before the writ of possession is posted.

(10) Changes one of the possible deadlines for implementing the residential eviction diversion program to 270 days after the effective date of the Act.

(11) Provides that the Residential Eviction Diversion Program is to be established and implemented by the Justice of the Peace Court or the Court's designee, which may be the Right to Counsel Coordinator.

(12) Expands the exemption to participation in the residential eviction diversion program to include when threats of substantial or irreparable harm to the landlord's or other tenant's person or property and cites the appropriate provisions of the Delaware Code relating to proceedings based on irreparable harm.

(13) Changes what a landlord is required to do once the Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat expires or is not renewed.

(14) Makes Sections 1, 2, 4, 5, and 8 of this Act effective 120 days after the Act's enactment and makes the effective date of Section 3 of the Act (regarding the residential eviction diversion program) contingent on funding.

(15) Requires the Coordinator to provide the General Assembly with a copy of the first annual report to determine if additional funding is needed to address the fiscal impact of the Act on the Justice of the Peace Court.

Author: Senator Townsend