An act relating to fees in lieu of security deposits; creating s. 83.491, F.S.; authorizing a landlord to offer a tenant the option to pay a fee in lieu of a security deposit; authorizing a landlord to offer a tenant the option to pay the security deposit in a specified manner; requiring the landlord to notify the tenant of certain unpaid fees and costs within a specified time after the conclusion of the tenancy; prohibiting the landlord from filing an insurance claim within a specified period of time; providing requirements for the landlord and insurer if an insurance claim to recover certain losses is filed; prohibiting the landlord from accepting certain payments; requiring the landlord to provide certain written notice to the tenant; requiring a written agreement signed by the landlord, or the landlord's agent, and the tenant if the tenant decides to pay a fee in lieu of the security deposit; prohibiting the written agreement from contradicting specified laws; requiring that the written agreement contain certain information; requiring a specified disclosure in the written agreement; providing options for paying the fee; specifying that certain fees, insurance products, and surety bonds are not security deposits; specifying

that landlords have exclusive discretion as to whether to offer tenants the option to pay a fee in lieu of a security deposit; prohibiting a landlord from approving or denying an application for occupancy based on a prospective tenant's choice to pay a fee in lieu of a security deposit; requiring that landlords who offer a tenant the fee option offer such option to all new tenants renting a dwelling unit on the same premises; providing an exception; providing construction; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 83.491, Florida Statutes, is created to read:

83.491 Fee in lieu of security deposit.—

(1)(a) If a rental agreement requires a security deposit, a landlord may offer a tenant the option to pay a fee in lieu of a security deposit.

(b) A landlord may provide a tenant the option of paying a security deposit in monthly installments in an amount that is agreed upon between the tenant and the landlord while participating in the fee program.

(2)(a) If a tenant agrees to pay a fee in lieu of a

CODING: Words stricken are deletions; words underlined are additions.

security deposit, the landlord must notify the tenant within 30 days after the conclusion of the tenancy if there are any costs or fees due resulting from unpaid rent, fees, or other obligations under the rental agreement, including, but not limited to, costs required for repairing damage to the premises beyond normal wear and tear.

(b) A landlord may not submit a claim to an insurer to recover the landlord's losses associated with unpaid rent, fees, or other obligations under the rental agreement, including, but not limited to, costs required for repairing damage to the premises beyond normal wear and tear until at least 15 days after providing the tenant with the required notice under paragraph (a).

1. The landlord must include an itemized list of any unpaid amounts and the dates such amounts were due, documentation supporting any itemized damages and costs of repairs, and a copy of any written objection or report of any communication of objection by the tenant when the landlord submits a claim to an insurer.

2. If an insurer pays a claim that was submitted under this subsection to a landlord and the insurer has subrogation rights, the insurer may, within 1 year after the tenancy that was the subject of the claim ends, seek reimbursement from the tenant for the amounts paid to the landlord. If the insurer seeks reimbursement from the tenant, the following apply:

a. The insurer must provide the tenant with all documentation for losses which the landlord provided to the insurer in support of the landlord's claim and a copy of the settlement statement documenting the insurer's payment of the landlord's claim.

b. The tenant retains any defenses against the insurer which the tenant would otherwise have against the landlord.

3. A landlord may not accept payment from both a tenant and an insurer for amounts associated with the same rent, fees, or damages.

(3) If a landlord offers a tenant the option to pay a fee in lieu of a security deposit, the landlord must notify the tenant in writing of all of the following:

(a) That the tenant has the option to pay a security deposit instead of the fee at any time.

(b) That the tenant may, at any time, terminate the agreement to pay the fee in lieu of the security deposit and instead pay a security deposit as listed in a rental agreement between the landlord and tenant or, if a security deposit was not agreed upon in a rental agreement between the landlord and tenant, in the amount that is otherwise offered to new tenants for a substantially similar dwelling unit on the date that the tenant terminates the agreement.

(c) That the tenant may choose to pay the security deposit in monthly installments in an amount that is agreed upon between

the landlord and tenant while participating in the fee program.

(d) Whether any additional charges apply for the options provided in paragraphs (a) and (b).

(e) The amount of the payments required for each option the landlord offers.

(f) That the fee is nonrefundable, if applicable.

(g) That the fee is only for securing occupancy without paying a required security deposit.

(h) That the fee payment does not limit or change the tenant's obligation to pay rent and fees, if any, under the rental agreement or limit or change the tenant's obligation to pay the costs of repairing damage to the premises beyond normal wear and tear.

(i) That if the landlord uses any portion of the fee to purchase insurance, the tenant is not insured and is not a beneficiary of the landlord's insurance coverage, and that the insurance does not limit or change the tenant's obligations to pay rent and fees under the rental agreement or change the tenant's obligation to pay the costs of repairing damage to the premises beyond normal wear and tear.

(4)(a) If a tenant decides to pay a fee in lieu of a security deposit, a written agreement to collect the fee must be signed by the landlord, or the landlord's agent, and the tenant. The written agreement may not contain any clause that contradicts s. 83.45 or s. 83.47. The written agreement must, at

a minimum, specify all of the following:

1. The amount of the fee, which may not be increased during the term of the rental agreement.

2. How and when the fee is to be collected.

3. The process and timeframe during which a tenant must pay the security deposit specified in the rental agreement if the tenant defaults on paying the fee, and that such default will not adversely affect the tenant's credit rating if the security deposit is timely paid.

4. That the written agreement may be terminated at any time as long as the tenant pays the amount of the security deposit specified in the rental agreement.

5. If the tenant pays the amount of the security deposit specified in the rental agreement, then the tenant's default on paying the fee or termination of the written agreement may not adversely impact the tenant's credit report.

(b) The written agreement specified under paragraph (a) must also include a disclosure in substantially the following form:

FEE IN LIEU OF SECURITY DEPOSIT

THIS FEE IS NOT A SECURITY DEPOSIT AND PAYMENT OF THE FEE DOES NOT ABSOLVE THE TENANT OF ANY OBLIGATIONS UNDER THE RENTAL AGREEMENT, INCLUDING THE OBLIGATION

TO PAY RENT AS IT BECOMES DUE AND ANY COSTS AND DAMAGES BEYOND NORMAL WEAR AND TEAR WHICH THE TENANT OR HIS OR HER GUESTS MAY CAUSE.

THE TENANT MAY TERMINATE THIS AGREEMENT AT ANY TIME AND STOP PAYING THE FEE AND INSTEAD PAY THE SECURITY DEPOSIT AS PROVIDED IN SECTION 83.491, FLORIDA STATUTES.

THIS AGREEMENT HAS BEEN ENTERED INTO VOLUNTARILY BY BOTH PARTIES AND THE TENANT AGREES TO PAY THE LANDLORD A FEE IN LIEU OF A SECURITY DEPOSIT AS AUTHORIZED UNDER SECTION 83.491, FLORIDA STATUTES. IF THE LANDLORD USES ANY PORTION OF THE TENANT'S FEE TO PURCHASE INSURANCE, THE TENANT IS NOT INSURED AND IS NOT A BENEFICIARY OF SUCH COVERAGE, AND THE INSURANCE DOES NOT CHANGE THE TENANT'S FINANCIAL OBLIGATIONS UNDER THE RENTAL AGREEMENT.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(5) A fee in lieu of a security deposit may be:

(a) A recurring monthly fee, payable on the same date that

the rent payment is due under the rental agreement; or

(b) Payable upon a schedule that the landlord and tenant choose and as specified in the written agreement.

(6) A fee collected under this section, or an insurance product or a surety bond accepted, by a landlord in lieu of a security deposit is not a security deposit as defined in s. 83.43(12).

(7) A landlord has exclusive discretion as to whether to offer tenants the option to pay a fee in lieu of a security deposit and is not required to offer such fee option to tenants. However, if a landlord offers a tenant an option to pay a fee in lieu of a security deposit, the landlord may not use a prospective tenant's choice to pay, or offer to pay, a fee in lieu of a security deposit as criteria in the determination to approve or deny an application for occupancy, and the landlord must also offer all new tenants renting a dwelling unit on the same premises the option to pay a fee in lieu of a security deposit, unless the landlord chooses to prospectively terminate the fee option for all new rental agreements.

(8)(a) This section does not:

1. Require a fee collected in lieu of a security deposit to be used to purchase an insurance product or a surety bond; or

2. Prohibit a tenant from being offered or sold an insurance product or a surety bond to present to the landlord in lieu of a security deposit if the offer or sale of such

insurance product or surety bond complies with the laws of this state.

(b) Acceptance by a landlord of an insurance product or a surety bond that is purchased or procured by a tenant, a landlord, or an agent of the landlord may not be considered an offer on the part of the landlord to allow a tenant to pay a fee in lieu of a security deposit for the purposes of subsection (7).

(9) This section applies to rental agreements entered into or renewed on or after July 1, 2023.

Section 2. This act shall take effect July 1, 2023.