Stricken language would be deleted from and underlined language would be added to the Arkansas Constitution.

1	State of Arkansas
2	94th General Assembly
3	Regular Session, 2023 SJR 12
4	
5	By: Senator G. Leding
6	By: Representative J. Richardson
7	
8	SENATE JOINT RESOLUTION
9	AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO CREATE
10	AN IMPLIED WARRANTY OF HABITABILITY FOR ARKANSAS
11	TENANTS AND PROVIDE PROTECTIONS TO ARKANSAS TENANTS.
12	
13	
14	Subtitle
15	A CONSTITUTIONAL AMENDMENT TO CREATE AN
16	IMPLIED WARRANTY OF HABITABILITY AND
17	PROVIDE PROTECTIONS TO ARKANSAS TENANTS.
18	
19	
20	BE IT RESOLVED BY THE SENATE OF THE NINETY-FOURTH GENERAL ASSEMBLY OF THE
21	STATE OF ARKANSAS, AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
22	MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:
23	
24	THAT the following is proposed as an amendment to the Constitution of
25	the State of Arkansas, and upon being submitted to the electors of the state
26	for approval or rejection at the next general election for Representatives
27	and Senators, if a majority of the electors voting thereon at the election
28	adopt the amendment, the amendment shall become a part of the Constitution of
29	the State of Arkansas, to wit:
30	
31	SECTION 1. The Arkansas Constitution is amended to add an additional
32	amendment to read as follows:
33	§ 1. Finding and intent of amendment.
34	It is declared that:
35	(1) Arkansas is the only state in the country where the
36	nonpayment of rent and failure to vacate is a crime:



1	(2) Arkansas is the only state in the country without an implied
2	warranty of habitability;
3	(3) Arkansas has not clearly codified the holding of Gorman v.
4	Ratliff, 289 Ark. 332, 712 S.W.2d 888, denying a landlord the right to use
5	self-help to evict a tenant without a court order;
6	(4) Arkansans have fewer rights than tenants in any other state;
7	(5) The right to a safe and habitable home for oneself and one's
8	family is a core and fundamental right and the people of the State of
9	Arkansas should be given the right to have their voices heard on this issue;
10	<u>and</u>
11	(6) Over ninety percent (90%) of Arkansans support the enactment
12	of an implied warranty of habitability.
13	
14	§ 2. Failure to pay rent and refusal to vacate not criminal offense.
15	The failure to pay rent when due shall not operate to forfeit the
16	remainder of the lease term by operation of law, and subsequent failure to
17	vacate after being given notice is not a criminal offense.
18	
19	§ 3. Prohibited terms and conditions of rental agreement.
20	(a)(1) A rental agreement shall not require a tenant to waive or forgo
21	a right or remedy established by this amendment.
22	(2) A provision in a rental agreement prohibited by this
23	amendment shall be unenforceable and void.
24	(b) If a landlord seeks to enforce a provision prohibited by this
25	amendment or accepts a tenant's voluntary compliance with a provision
26	prohibited by this amendment, a court may award the tenant an amount not to
27	exceed one (1) month's rent.
28	
29	§ 4. Landlord disclosure.
30	(a) Before entering into a rental agreement, a prospective landlord
31	shall disclose to a prospective tenant in writing the following information:
32	(1) Any condition of the premises that the landlord knows or
33	should know on a reasonable inspection of the premises that would constitute
34	a noncompliance under § 5 of this amendment and would materially interfere
35	with the health and safety of the tenant or an immediate family member of the
36	tenant;

1	(2) Whether, to the knowledge of the landlord, a foreclosure
2	action or nonjudicial foreclosure proceeding has been commenced against the
3	<pre>premises;</pre>
4	(3) Any rules affecting the tenant's use and enjoyment of the
5	premises, whether adopted by the landlord or another authorized person;
6	(4) The name of the landlord;
7	(5) The name of and contact information for any person
8	authorized to manage the premises;
9	(6) The name of and contact information for any person
10	authorized to receive a notice or demand for the owner of the premises; and
11	(7) The address to which or method by which the tenant must
12	deliver rent.
13	(b) A landlord shall update the information disclosed under subsection
14	(a) of this section as necessary.
15	
16	§ 5. Landlord duty to maintain habitable premises.
17	(a) In any residential rental agreement, the landlord has a
18	nonwaivable duty to provide and maintain, throughout the period of the
19	tenancy, premises that:
20	(1) Are safe, clean, and fit for human habitation; and
21	(2) Comply with the requirements of applicable building,
22	housing, and health regulations.
23	(b) A landlord shall at all times during the tenancy maintain the
24	premises in a habitable condition.
25	(c) Premises meet the habitable condition requirement of this
26	<pre>amendment if:</pre>
27	(1) The dwelling unit has effective waterproofing and weather
28	protection of a roof and exterior walls, including windows and a door;
29	(2) The dwelling unit has plumbing facilities that conform to
30	applicable law and are maintained in good working order;
31	(3) The dwelling unit has a water supply approved under
32	applicable law that is:
33	(A) Under the control of the tenant or landlord and is
34	capable of producing hot and cold running water;
35	(B) Furnished with appropriate fixtures;
36	(C) Connected to a sewage disposal system approved under

1	applicable law; and
2	(D) Maintained so as to provide safe drinking water and to
3	be in good working order to the extent that the water supply can be
4	controlled by the landlord;
5	(4) The dwelling unit has adequate heating facilities that
6	conform to applicable law and are maintained in good working order;
7	(5) The dwelling unit has electrical lighting with wiring and
8	electrical equipment that conform to applicable law and are maintained in
9	good working order;
10	(6) The buildings, grounds, and appurtenances on the premises at
11	the time of the commencement of the rental agreement are:
12	(A) Safe for normal and reasonably foreseeable uses; and
13	(B) Clean, sanitary, and free from all accumulations of
14	debris, filth, rubbish, and garbage, and rodents and vermin;
15	(7) All areas under the control of the landlord are kept:
16	(A) Safe for normal and reasonably foreseeable uses; and
17	(B) Clean, sanitary, and free from all accumulations of
18	debris, filth, rubbish, and garbage, and rodents and vermin;
19	(8) The dwelling unit has an adequate number of appropriate
20	receptacles for garbage and rubbish that are in clean condition and good
21	repair at the time of the commencement of the rental agreement, and the
22	landlord provides and maintains appropriate serviceable receptacles for
23	garbage and rubbish thereafter and arranges for their removal;
24	(9) The dwelling unit has floors, walls, ceilings, stairways,
25	and railings maintained in good repair;
26	(10) The premises have proper ventilation, air conditioning, and
27	other facilities and appliances, including without limitation elevators,
28	maintained in good repair if supplied or required to be supplied by the
29	<pre>landlord;</pre>
30	(11) The premises have a working smoke alarm or smoke detector,
31	with working batteries if solely battery-operated, provided during the
32	duration of the tenancy;
33	(12)(A) The premises have a working carbon monoxide alarm, with
34	working batteries if solely battery-operated, provided for during the
35	duration of the tenancy.
36	(B) Subdivision (c)(12)(A) of this section applies only if

1	<u>a dwelling unit contains a carbon monoxide source or is located within a</u>
2	premises that contains a carbon monoxide source and the dwelling unit is
3	connected to the room in which the carbon monoxide source is located by a
4	door, duct work, or a ventilation shaft; and
5	(13) The premises have:
6	(A) Working locks for all dwelling unit entrance doors and
7	keys for those locks that require keys; and
8	(B) Working latches for all windows by which access may be
9	had to the dwelling unit portion of the premises.
10	
11	§ 6. Landlord noncompliance and tenant remedies.
12	(a) If the landlord fails to comply with the landlord's obligations
13	under § 5 of this amendment and, after receiving actual notice of the
14	noncompliance from the tenant, a governmental entity, or a qualified
15	independent inspector, the landlord fails to repair the noncompliance within
16	a reasonable time, the tenant may:
17	(1) Withhold the payment of rent for the period of the
18	noncompliance;
19	(2) Obtain injunctive relief;
20	(3) Recover damages, costs, and reasonable attorney's fees;
21	(4) Make workmanlike repairs to the premises and deduct the
22	actual and reasonable cost of the repairs from the rent, not to exceed the
23	amount of three (3) month's rent during a twelve-month period; or
24	(5) Terminate the rental agreement on reasonable notice of the
25	termination to the landlord.
26	(b) The tenant remedies under this section are not available if the
27	condition of the premises was caused by a negligent or deliberate act or
28	omission of the tenant or a person on the premises with the tenant's consent.
29	
30	§ 7. Landlord's noncompliance as defense to action for possession.
31	(a) In an action for possession of the premises based upon nonpayment
32	of rent by the tenant or in an action for rent in which the tenant is in
33	possession of the premises, the tenant may counterclaim for any amount that
34	he or she may recover under the rental agreement.
35	(b)(l) Except as provided in subsection (e) of this section, if the
36	tenant filed a counterclaim under subsection (a) of this section, the court

1 may order the tenant to pay into the court registry all or part of the 2 accrued rent due by the tenant and thereafter accruing and shall determine 3 the amount due to each party. 4 (2) The party to whom a net amount is owed shall be paid first 5 from the money paid into the court registry, and the balance by the other 6 party. 7 (c) If no rent remains due by the tenant after application of this 8 section and a judgment is made in favor of the tenant, the judgment shall be 9 entered for the tenant in the action for possession. 10 (d) If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the court may order that the landlord may 11 12 recover reasonable attorney's fees. 13 (e) In an action for rent in which the tenant is not in possession of 14 the premises and does not owe any past due rent payments, the tenant may 15 counterclaim as provided in subsection (a) of this section, but the tenant is 16 not required to pay any rent into the court registry. 17 18 § 8. Retaliatory conduct by landlord prohibited. 19 (a) A landlord may not retaliate against a tenant by taking an action 20 described in subsection (b) of this section if the tenant: 21 (1) In good faith exercises or attempts to exercise against a 22 landlord a right or remedy granted to the tenant by the rental agreement, 23 municipal ordinance, a federal rule or regulation, or a state statute; 24 (2) Gives the landlord a notice to repair the premises or 25 exercises a remedy under this amendment; 26 (3) Complains to a governmental entity responsible for enforcing 27 building or housing codes, a public utility, or a civic or nonprofit agency, 28 and the tenant: 29 (A) Claims a building or housing code violation or utility 30 problem; and 31 (B) Believes in good faith that the complaint is valid and 32 that the violation or problem occurred; or 33 (4) Establishes, attempts to establish, or participates in a

tenant organization formed to address tenant housing issues.

(1) Filing an eviction proceeding;

(b) A landlord may not retaliate against a tenant by:

34

35

36

1	(2) Depriving the tenant of the use of the premises; except for
2	reasons authorized by law;
3	(3) Decreasing landlord services relating to the tenancy or the
4	tenant;
5	(4) Increasing the tenant's rent or terminating the tenant's
6	rental agreement; or
7	(5) Engaging in conduct that materially interferes with the
8	tenant's rights under the tenant's rental agreement.
9	
10	§ 9. Tenant remedies for retaliation.
11	(a)(l) If a landlord retaliates against the tenant under § 8 of this
12	amendment, the tenant may recover from the landlord a civil penalty of three
13	(3) months' rent plus five hundred dollars (\$500), actual damages, court
14	costs, moving costs, actual expenses, civil penalties, or declaratory or
15	injunctive relief, less any rent owed or other sums for which the tenant is
16	liable to the landlord.
17	(2) A tenant may recover reasonable attorney's fees in an action
18	for recovery of property damage caused to the tenant's property by the
19	landlord.
20	(b) If the tenant's rent payment to the landlord is subsidized in
21	whole or in part by a governmental entity, the civil penalty granted under
22	this section shall reflect the fair market rent of the dwelling unit plus
23	five hundred dollars (\$500).
24	
25	§ 10. Access to dwelling unit.
26	(a)(l) Except as provided in this section, a landlord shall not enter
27	a dwelling unit without the tenant's consent.
28	(2) A tenant shall not unreasonably withhold consent for the
29	landlord to enter the dwelling unit.
30	(b) A landlord may enter the dwelling unit for the following purposes
31	between the hours of 9:00 a.m. and 9:00 p.m. on at least forty-eight (48)
32	hours' notice to the tenant:
33	(1) When it is necessary that the landlord inspect the premises;
34	(2) To make necessary or agreed-upon repairs, alterations, or
35	<pre>improvements to the premises;</pre>
36	(3) To supply agreed-upon landlord services relating to the

1	tenancy, or
2	(4) To exhibit the dwelling unit to prospective or actual
3	purchasers, mortgagees, tenants, workers, or contractors.
4	(c) A landlord may only enter a dwelling unit without consent or
5	notice when the landlord has a reasonable belief that there is an imminent:
6	(1) Danger to any person in the dwelling unit; or
7	(2) Threat of property damage to the dwelling unit.
8	
9	§ 11. Penalties for abuse or abuse of access to rental property.
10	(a) If a tenant unreasonably refuses to allow the landlord access to
11	the dwelling unit, the landlord may recover actual damages or one (1) month's
12	rent, whichever is greater, and reasonable attorney's fees and costs, and
13	the:
14	(1) Court may compel the tenant to grant the landlord access to
15	the dwelling unit; or
16	(2) Landlord may terminate the rental agreement by giving the
17	tenant notice in a court order stating that if the tenant fails to grant the
18	landlord access to the dwelling unit not later than fourteen (14) days after
19	the notice, the rental agreement will terminate on the expiration of the
20	fourteen-day period or on a later specified date.
21	(b) If a landlord unlawfully enters into a tenant's dwelling unit,
22	lawfully enters but in an unreasonable manner, or makes repeated demands to
23	enter into the dwelling unit that are otherwise lawful but have the effect of
24	harassing the tenant, the tenant may recover actual damages or one (1)
25	month's rent, whichever is greater, and reasonable attorney's fees and costs,
26	and the tenant may:
27	(1) Seek injunctive relief to prevent the recurrence of the
28	conduct; or
29	(2) Terminate the rental agreement by giving the landlord notice
30	in a court record that the rental agreement will terminate immediately or on
31	a later specified date that is not later than thirty (30) days after notice
32	is given.
33	
34	§ 12. Payment of rent and rent increases.
35	(a) Rent is payable without demand or notice at the time and place
36	agreed upon by the parties.

1	(b) An increase in rent shall take effect on the first day of the
2	rental period following no less than sixty (60) days' actual notice to the
3	tenant.
4	
5	§ 13. Illegal evictions and penalties.
6	(a) A landlord shall not:
7	(1) Change the locks on a dwelling unit without giving the
8	tenant new keys, except through the proper judicial process;
9	(2) Interrupt or cause the interruption of heat, running water,
10	hot water, electricity, gas, or other essential utility services to the
11	tenant, except for temporary interruption for emergency repairs; or
12	(3) Deny a tenant access to and possession of the tenant's
13	personal property, except through the proper judicial process.
14	(b) In the case of the lease of a site for a manufactured home, no
15	landlord may remove the home from the leased site, except through the proper
16	judicial process.
17	(c) If a landlord violates this section, the tenant may:
18	(1) Recover possession of the premises and an amount equal to
19	three (3) months' rent; or
20	(2) Terminate the rental agreement and recover the tenant's
21	security deposit, all prepaid rent, and three (3) months' rent.
22	
23	SECTION 2. EFFECTIVE DATE. This amendment shall be effective on and
24	after January 1, 2025.
25	
26	SECTION 3. BALLOT TITLE AND POPULAR NAME. When this proposed
27	amendment is submitted to the electors of this state on the general election
28	<pre>ballot:</pre>
29	(1) The title of this joint resolution shall be the ballot
30	title; and
31	(2) The popular name shall be "An Amendment to the Arkansas
32	Constitution to Create an Implied Warranty of Habitability and to Provide
33	Protections for Arkansas Tenants".
34	
35	
36	