A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Coronavirus Support Temporary Amendment Act of 2021 to update certification for utility disconnection relief criteria; to amend DC Code 16-1501 to remove requirements for housing providers to apply for STAY DC; to allow tenants to declare financial hardship incurred during the public health emergency as a defense in an eviction case; to amend Section 501 of the Rental Housing Act of 1985 to allow legal services provider to receive unredacted notices filed with the Rent Administrator upon request; to update notice requirements for non-payment of rent; to create a tenant financial hardship declaration form that must be attached to the notice for non-payment of rent; and to make a conforming amendment to Section 905 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to clarify the Council Chairman's authority to enforce the mandatory vaccination requirement adopted by the Council.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Tenant Safe Harbor Emergency Amendment Act of 2021".

Sec. 2. Section 307 of the Coronavirus Support Temporary Amendment Act of 2021, effective June 24, 2021 (D.C. Law 24-9; 68 DCR 4824), is amended as follows:

(a) Subsection (i) is amended to read as follows:

"(i) Subsections (b) and (f) of this section shall expire the on October 27, 2021.

(b) Subsection (j) is amended to read as follows:

"(j)(1) After October 12, 2021, and except as otherwise prohibited by subsections (b) and (f) of this section, a company shall not disconnect, suspend, or degrade service, for non-payment of a bill, any fees for service or equipment, or any other charges, if:

"(A) The company has failed to engage the customer as required under subsection (k) of this section;

"(B) The customer owes less than $600;

"(C) The customer has entered into a payment plan with the company and either is meeting the terms of the payment plan or is less than 2 months behind the terms of the payment plan;

"(D) Prior to October 12, 2021, the customer has requested to enter into a payment plan with the company and fewer than 45 days have elapsed following the customer's initial request; or

"(E) The Mayor has certified or the customer has provided documentary evidence that the customer qualifies for utility disconnection relief and not more than 90 days have elapsed since October 12, 2021.

"(2) For purposes of paragraph (1)(E) of this subsection, the Mayor shall certify that an individual is qualified for utility disconnection relief if the individual:

"(A) Within the prior 6 months, received or was approved for a benefit under the Low-Income Home Energy Assistance Program ("LIHEAP"), Utility Discount Program ("UDP"), DC Water Customer Assistance Program ("CAP"), or STAY DC Program;

"(B) Is receiving a benefit under the Supplemental Nutrition Assistance Program ("SNAP") or Temporary Assistance for Needy Families ("TANF") program; or

"(C) Is 21 years of age or older and receiving a benefit under Medicaid or the DC Healthcare Alliance.

"(3)(A) By September 13, 2021, the Mayor shall provide notice to each individual certified as qualified for utility disconnection relief pursuant to paragraph (2) of this subsection.

"(B) By September 27, 2021, and every 4 weeks thereafter until January 1, 2022, the Mayor shall provide companies and the Office of the People's Counsel ("OPC") with a list of each individual certified as qualified for utility disconnection relief, including the individual's home address. Such list shall be property of the District and shall only be used to determine that an individual on the list is qualified for relief from utility disconnection and to communicate that to affected households and companies as needed.

"(3A) A company shall consider a customer as certified as qualified for utility disconnection relief under this subsection where:

"(A) The customer's name is included on the list provided to a company under paragraph (3)(B) of this subsection;

"(B) The customer's home address is included on the list provided to a company under paragraph (3)(B) of this subsection, but the name of the individual certified does not match the name of the customer on the account; or

"(C) The customer provides the company with a copy of the notice of certification provided by the Mayor under paragraph (3)(A) of this subsection by mail, email, fax, or other reasonable method.

"(4) By August 9, 2021, the Mayor shall, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), promulgate emergency rules to implement this subsection, including guidance on the District's and the companies' responsibilities under this subsection.".

(c) Subsection (p)(1) is amended to read as follows:

"(1) "Payment assistance programs" shall mean LIHEAP, UDP, or CAP.".

Sec. 3. Tenant Safe Harbor for Financial Hardship.

(a) Title 16 of the District of Columbia is amended as follows:

(1) Section 16-1501 is amended to read as follows:

"§ 16-1501. Definition; summons.

"(a) When a person detains possession of real property without right, or after his right to possession has ceased, the Superior Court of the District of Columbia, on complaint under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts, may issue a summons in English and Spanish to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession.

"(b) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section for nonpayment of rent in an amount less than $600. Nothing in this subsection shall prevent the person aggrieved from filing a complaint to recover the amount owed.

"(c)(1) Prior to January 1, 2022, the person aggrieved shall not file a complaint seeking relief pursuant to this section, except when:

"(A) The complaint alleges that the tenant's continuing presence at the housing accommodation where the tenant resides presents a current and substantial threat to the health and safety of tenants, on-site agents, or employees of the owners of the housing accommodation, or household members or guests of other tenants, or residents of immediately adjacent properties, because the tenant has violated an obligation of tenancy by engaging in an unlawful possession of a firearm, threats or acts of violence, or assault;

"(B) The complaint alleges that the tenant has willfully or wantonly caused significant damage to the unit, building, premises, or property of the housing provider; or

"(C)(i) The complaint alleges non-payment of rent, the complaint was filed on or after October 12, 2021, and the person aggrieved provides documentation at the time of filing demonstrating that:

"(I) He or she has applied for emergency rental assistance through the STAY DC program on behalf of the tenant, or initiated the application on behalf of the tenant by completing all landlord portions of the application, the tenant has been notified in writing of the application, and the housing provider is eligible to seek possession pursuant to § 42- 3505.01(b-1)(1); and

"(II) The tenant has been served with a written notice which meets the requirements of § 42-3505.01(b-1)(2) and all other requirements under District law.

"(3) It shall be a dispositive affirmative defense requiring dismissal of a complaint for non-payment of rent filed between October 12, 2021 and December 31, 2021 if a tenant can demonstrate with substantial evidence provided through testimony that:

"(A) The housing provider did not pursue rental assistance as required timely or in good faith;

"(B) The tenant did not receive notice of the rental assistance application;

"(C) The housing provider did not provide a notice that meets the requirements of 42-3505.01(b-1)(2), and all other requirements under District of Columbia law;

"(D) The tenant or their authorized representative submitted an application for emergency rental assistance prior to or during the 60 days after receiving a past due rent notice, and that application is still pending, approved and awaiting payment, or under appeal;

"(E) The housing provider has not met the requirements of § 42-3505.01(b-1)(1); or

"(F) For complaints that involve rent arrears accrued since March 11, 2020, the landlord did not offer or negotiate a payment plan in good faith pursuant to § 42-3281 at any time since March 11, 2020.

"(4) For complaints filed pursuant to (c)(1)(B) of this subsection, it shall be a dispositive affirmative defense requiring dismissal of a complaint if a tenant can demonstrate with substantial evidence that the housing provider willfully or negligently contributed to the significant damage of the unit, premises, building, or property that are the subject of the complaint.

"(5) Where a complaint filed pursuant to subparagraph (1) alleges non-payment of rent during the COVID-19 covered period, a tenant shall have the right to raise financial hardship during the covered period as a defense. In determining whether a tenant has suffered a financial hardship, the court shall consider, among other relevant factors, the following:

"(A) Whether the tenant's income prior to or during the COVID-19 covered period was below 40 percent area median income;

"(B) Whether the tenant experienced reductions in income or an increase in expenses during the COVID-19 covered period because of the public health emergency or coronavirus and would be unlikely to find a similar sized rental unit for a lower market rent within the District of Columbia; or

"(C) Whether the tenant is currently eligible or was eligible for cash assistance, supplemental nutrition assistance program (food stamps), supplemental security

income (SSI), Medicaid or DC Healthcare Alliance, or unemployment insurance or benefits during the COVID-19 covered period.

"(C) Whether vacating the premises and moving into new permanent housing would pose a significant health risk because the tenant or one or more members of the tenant's household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.

"(6) If the court finds the tenant has established a financial hardship defense, the court shall not enter a judgment for possession against the tenant. A tenant may establish a financial hardship defense by submitting a financial hardship declaration to the court or by providing testimony, documentation, or other evidence of the factors in this subsection to the court. Nothing in this subsection shall prevent the court from entering a money judgment where the housing provider meets all other requirements under District law for the entry of a money judgment.

"(7) For purposes of this subsection, the term:

"(A) "Act of violence" shall have the same meaning as "crime of violence" as provided in § 23-1331(4).

"(B) "Assault" shall be construed according to § 22-404.

"(C) (C) "COVID-19 covered period" means March 11, 2020 until July 24, 2021.

"(D) "Significant damage" includes large holes in the walls of the unit that cannot be repaired with plaster and paint, destruction of major building systems such as electric or plumbing, destruction of appliances such as ovens, refrigerators or dish washing

machines in the unit, or damage to large areas of flooring such that the housing provider will have to replace the damaged flooring.

"(E) "Threat" shall be construed according to § 22-407.

"(F) "Unlawful possession of a firearm" shall be construed according to § 22-4503.

"(8) Nothing in this section shall be construed to create an obligation on the part of any person to pursue an eviction action under this subsection.

"(9) No tenant shall be evicted from a rental unit based on a complaint filed under this subsection unless the court determines by a preponderance of the evidence that the alleged violation of an obligation of tenancy meets all of the requirements of this subsection.

"(10) At the initial hearing for any complaint for non-payment of rent, if the complaint does not allege sufficient facts or the person aggrieved has not produced sufficient documentation to meet all pre-filing requirements under District law, the Court shall dismiss the complaint.

"(d)(1) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section without a valid registration or claim or exemption issued pursuant to § 42-3502.05, and a current license for rental housing issued pursuant to § 47-2828(c)(1) presented at the time of filing.

"(2) The Court may waive the requirements for a current license for rental housing in this subsection if the person aggrieved can demonstrate that the housing provider for the housing accommodation was unable to obtain or renew a current rental housing license due to extenuating circumstances.

"(3) The requirements of this subsection shall not apply to complaints involving subtenants.

"(e) The person aggrieved shall not file a complaint pursuant seeking relief to this section based on consistent late payment of rent by a tenant occurring between the dates of March 11, 2020, and 60 days after the expiration of the public health emergency declared in response to the novel 2019 coronavirus (SARS CoV-2).

"(f) Complaints seeking relief pursuant to this section that are not permitted to be filed pursuant to subsection (c) of this section shall not be filed until January 1, 2022, at the earliest.

"(g) Only subsection (a) of this section shall apply to cases involving commercial tenants.".

(2) Section 16-1503 is amended to read as follows:

"When, upon a trial in a proceeding pursuant to this chapter, it appears that the plaintiff is entitled to the possession of the premises, judgment and execution for the possession shall be awarded in his favor, with costs, except where the court finds the residential tenant has established a financial hardship defense under § 16-1501(c)(5); and if the plaintiff becomes nonsuit or fails to prove his right to the possession, the defendant shall have judgment and execution for his costs.".

(b) Section 501 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code Sec. 42-3505.01) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

"(1) Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit; provided, that the nonpayment of a late fee shall not be the basis for an eviction. No tenant shall be evicted from a rental unit for any reason rent unless the tenant has been served with a written notice which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator. The Rent Administrator shall provide unredacted copies of any such notices to any legal services provider upon request.".

(2) Paragraph (2) is amended by striking the phase "summons" and inserting the word "notice" in its place.

(3) Subsection (b-1) is amended to read as follows:

"(b-1)(1) On or after October 12, 2021, a housing provider may recover possession of a rental unit for nonpayment of rent when the past due rent is equal to more than $600 and any of the following applies:

"(A) The tenant fails to submit an emergency rental assistance application within 60 days of receiving a notice of past due rent;

"(B) The tenant's application for emergency rental assistance was denied, or the application was approved with a balance of equal to or greater than $600 remaining unpaid, and the tenant and housing provider have not established a rent payment plan pursuant to section 402 of the Coronavirus Support Temporary Amendment Act of 2021, effective June 24,

2021 (D.C. Law 24-9; D.C. Official Code § 42-3192.01), within 14 days of the denial; or

"(C) A tenant with a rent payment plan is at least $600 or 2 months behind on the terms of the payment plan, whichever is greater.

"(2) Prior to filing a complaint with the Superior Court for nonpayment of rent, a housing provider shall send to the tenant a notice of past due rent, and the housing provider may not file a claim to recover possession of the rental unit less than 60 days after providing the tenant with the required notice.

"(3) Prior to October 28, 2021, a notice of past due rent shall contain the following or substantively similar language:

"This is a notice of past due rent. The total amount of rent owed is [list specific amount due]. A ledger showing the dates of rent charges and payments for the period of delinquency is attached. You have the right to remain in the rental unit if the total balance of unpaid rent is paid in full or if you are current on a rent payment plan.

"[Name of housing provider] has initiated an application to STAY DC for emergency rental assistance on your behalf for any rent due after April 1, 2020. Only you or your authorized representative can complete the tenant portion of the application. If the ledger shows amounts due prior to April 2020, you should also seek assistance from other District emergency rental assistance programs, such as the Emergency Rental Assistance Program (ERAP).

"You have 60 days, or until [insert specific date], to submit your portion of any application(s) for emergency rental assistance. To apply for STAY DC, go to stay.dc.gov or call 833-4STAYDC (833-478-2932). The STAY DC call center can also connect you to application help and refer you to ERAP and other District emergency rental assistance programs.

"You may qualify for assistance if your household's annual income is equal

to or less than the amounts shown below:

People in Household	Maximum Income	People in Household	Maximum Income
1	$57,650	5	$88,900
2	$65,850	6	$95,500
3	$74,100	7	$102,100
4	$82,300	8	$108,650

"[Name of housing provider] has the right to file a case in court seeking your eviction, without further notice, if any of the following occur:

"(A) You fail to submit an emergency rental assistance application within 60 days;

"(B) You are denied emergency rental assistance for all or part of the past due amount and you have not established a rent payment plan with us within 14 days of the denial; or

"(C) You miss payments under a rent payment plan totaling at least $600 or two months of rent, whichever is greater.

"If [name of housing provider] files in court, your next notice will be a summons to appear in court. You have the right to defend yourself in court. Only a court can order your eviction. For further help or to seek free legal services, contact the Office of the Tenant Advocate at 202-719-6560 or the Landlord Tenant Legal Assistance Network at 202-780-2575.

"(3) On or after October 28, 2021, a notice of past due rent shall contain the following or substantively similar language:

"This is a notice of past due rent. The total amount of rent owed is [list specific amount]. A ledger showing the dates of rent charges and payments for the period of delinquency is attached. You have the right to remain in the rental unit if the total balance of unpaid rent is paid in full or if you are current on a rent payment plan.

"You may qualify for Emergency Rental Program Assistance (ERAP) if your household's income is equal to or less than the amounts shown below:

People in Household	Maximum Income	People in Household	Maximum Income
1	$35,280	5	$55,440
2	$40,320	6	$60,480
3	$45,360	7	$65,520
4	$50,400	8	$70,560

"Only you or your authorized agent may apply for ERAP. To learn more about the program and apply for assistance, please visit https://erap.dhs.dc.gov.

"[Name of housing provider] has the right to file a case in court seeking your eviction without further notice if you do not pay the total balance of unpaid rent in full or you miss payments under a rent payment plan totaling at least $600 or two months of rent, whichever is greater.

"If [name of housing provider files in court, your next notice will be a summons to appear in court. You have the right to defend yourself in court, including filling out the attached declaration of financial hardship. This declaration should be submitted to the court if you receive a summons.

"Only a court can order your eviction. For further help or to seek free legal services, including help applying for rental assistance, contact the Office of Tenant Advocate at 202-719-6560 or the Landlord Tenant Legal Assistance Network at 202-780-2575.

"**TENANT'S DECLARATION OF ECONOMIC HARDSHIP DURING THE COVID-19 PANDEMIC**

"I am a tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligation under a lease or tenancy agreement at (address of dwelling unit):

_____

"**YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY SELECTING ONE MORE OF THE OPTIONS BELOW**

I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:

"☐ My income during the COVID-19 covered period (March 11, 2020 through July 24, 2021) was below 40 percent of area median income, based on the chart below.

"☐ I experienced reductions in income or an increase in expenses during the COVID-19 covered period because of the public health emergency or coronavirus and would be unlikely to find a similar sized rental unit for a lower market rent within the District of Columbia.

"☐ I am currently or during the COVID-19 covered period was eligible for cash assistance, supplemental nutrition assistance program (food stamps), supplemental

security income (SSI), Medicaid or DC Healthcare Alliance, or unemployment insurance or benefits.

"☐ Vacating my home and moving into new permanent housing would pose a significant health risk because myself and/or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.

"To the extent that I have lost household income or had increased expenses, any additional public assistance that I have received since the start of the COVID-19 pandemic did not fully make up for my loss of household income or increased expenses.

"I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by my tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment against me. I further understand that my landlord may be able to seek eviction and that the law may provide certain protections at that time that are separate from those available through this declaration.

Signed:

Print Name:

Date:

"NOTICE: You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.

"40% Area Median Income Table:

People in Household	Maximum Income	People in Household	Maximum Income
1	$35,280	5	$55,440
2	$40,320	6	$60,480
3	$45,360	7	$65,520
4	$50,400	8	$70,560

(4) Subsection (r) is amended to read as follows:

"(r) No tenant shall be evicted from a rental unit unless the housing provider provides documentation to the court at the time of filing a writ of restitution demonstrating that the housing provider has a current business license for rental housing issued pursuant to § 47-2828(c)(1).".

(5) Subsection (s) is amended to read as follows:

"(s) No purchaser from a foreclosure auction or other auction shall issue a notice to quit or otherwise initiate an action for possession, ejectment, or their equivalents (or charge rent, fair use and occupancy, or their equivalents) against a current occupant, unless the purchaser has obtained the deed to the property. This subsection shall not alter the rights of tenants whose tenancies survive foreclosure.".

Section 4. Section 905 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.5), is amended by striking the phrase "employing them, without" and inserting the phrase "employing them, or the Chairman of the Council pursuant to section 406(c), without" in its place.

Section 5. Repealers.

(a) Subsection (a)(1) of Section 5 of the Public Emergency Extension and Eviction and Utility Moratorium Phasing Temporary Amendment Act of 2021, enacted on September 1, 2021 (D.C. Act 24-168; 68 DCR 9487), is repealed.

(b) Section (b)(D) of Section 5 of the Public Emergency Extension and Eviction and Utility Moratorium Phasing Temporary Amendment Act of 2021, enacted on September 1, 2021 (D.C. Act 24-168; 68 DCR 9487), is repealed.

(c) Subsection (a)(1) of Section 4 of the Public Emergency Extension and Eviction and Utility Moratorium Phasing Congressional Review Emergency Amendment Act of 2021 is repealed.

(d) Subsection (b)(D) Section 4 of the Public Emergency Extension and Eviction and Utility Moratorium Phasing Congressional Review Emergency Amendment Act of 2021 is repealed.

Section 6. Fiscal Impact Statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Section 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).