



**House
Legislative
Analysis
Section**

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THIS REVISED ANALYSIS REPLACES THE ANALYSIS DATED 5-12-88

MOBILE HOME PARK TENANTS

**House Bills 5602 and 5603 (Substitutes H-1)
Revised First Analysis (5-16-88)**

**Sponsor: Rep. Nelson Saunders
Committee: Urban Affairs**

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Mich. State Law Library

H.B. 5602 & 5603 (5-16-88)

THE APPARENT PROBLEM:

Mobile home park tenants have long complained that Michigan law treats those families who own their own mobile homes, but who rent space in a park, in the same way that it treats other tenants, when, in fact, their situation is considerably different. Tenants in an apartment building, for example, who receive a 30-day eviction notice, have 30 days to box up their belongings, find another apartment, and relocate. Mobile home owners, on the other hand, face the predicament of either moving their mobile homes to another park, or attempting to sell their homes in the parks they are being evicted from, all within that 30-day period. With the former option, tenants face the problem of locating parks that will accept their homes, and bearing the expense of breakdown, unhooking and moving costs. The latter option is subject to all the rules and regulations each park has governing in-park sales, inspections, age restrictions, and so forth.

Mobile home park tenants also complain about uneven enforcement of park rules and about park owners and operators who use rule enforcement and the threat of eviction as weapons to intimidate tenants. Both mobile home tenants and mobile home advocates feel that, while Michigan's landlord-tenant law is hailed as being among the most effective, progressive legislation in the nation, Michigan's mobile home regulations are badly in need of revision.

THE CONTENT OF THE BILL:

House Bill 5602 would amend the Mobile Home Commission Act and House Bill 5603 would amend the Revised Judicature Act to address the rights of tenants and owners of mobile home parks. The bills are tie-barred to each other, and would take effect December 1, 1988.

House Bill 5602 would prevent mobile home park owners or operators from denying a tenant the right to sell his or her mobile home, on-site, at a price determined by the tenant, if the purchaser qualified for tenancy and the mobile home met the conditions of written park rules or regulations. The provision would not apply to seasonal mobile home parks. Under the bill, mobile home park rules or regulations could include provisions governing the physical condition of mobile homes and the aesthetic characteristics of mobile homes in relation to the park, subject to the following:

- The age or size of a mobile home could not be used as the sole basis for refusing to allow an on-site, in-park sale or for refusing to allow the mobile home to remain. The burden of initiating suit against the mobile home park owner for violation of this provision would be on the tenant; in all other cases specified below the mobile home park

owner or operator, or both, would have the burden of initiating suit.

- The standards incorporated in the written park rules or regulations governing the physical condition and aesthetic characteristics of mobile homes in the park would apply equally to all tenants.

- A mobile home sold on-site would be required to conform with the Fire Protection in Mobile Homes Act.

- Any charge connected to the on-site sale of a mobile home other than for inspection by the park owner or operator prior to the sale, or the sales commission charged by a mobile home dealer, would be considered an entrance or exit fee, in violation of the act.

- A park owner or operator could charge a reasonable fee to inspect the mobile home before sale. The fee could not exceed \$30, or the amount charged for building permit inspections by the municipality, whichever was higher.

- Standards governing the physical condition of mobile homes and the aesthetic characteristics of mobile homes in the park, as incorporated in written park rules, could not be designed to defeat the intent of the bill, unless the mobile home park were changing its method of doing business and provided not less than one year's notice, unless a different notice period was otherwise provided by law, of the proposed change to all affected mobile home park residents. A change in a mobile home park's method of doing business would include conversion to a mobile home park condominium, conversion to total rental of both mobile home sites and park-owned mobile homes, or changes in the use of the land on which the mobile home park was located. Notwithstanding these provisions, a mobile home park could require that a mobile home be moved to a comparable site within the park.

Should a mobile home park resident sell his or her mobile home to the owner or operator of a park, after termination of the resident's tenancy for just cause, the resident would have the right to have the mobile home's value appraised. The sale price of the mobile home could not then be less than the appraised value.

A mobile home park rule that did either of the following could not be enforced against a resident, unless the rule was proposed and in force before the resident was approved for tenancy in the park:

- a) Prohibited those children who were previously approved under prior park rules from residing in the park. A rule prohibiting children, or additional children, could not be enforced against persons who were resident

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at the time the rule was adopted until after one year's notice to those persons;

b) Prohibited a resident from keeping those pets which were previously approved under prior park rules, except for dangerous animals.

Under the bill, the Mobile Home Commission could impose one or more of the following penalties if, after a notice and a hearing, a person were determined to have violated the act: censure; probation; placement of a limitation on a license; suspension or revocation of a license, in which case the commission could request the appointment of a receiver; denial of a license; a civil fine not to exceed \$10,000; or a requirement that restitution be made. A fine collected would be deposited with the state treasurer and credited to the Mobile Home Commission Fund. These penalties would not prohibit actions being taken under other sections of the act. Should the Department of Commerce find that the public health, safety, or welfare required emergency action, and incorporated that finding in its order, summary suspension of a license could be ordered, effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever was later, and effective during the proceedings. The bill would require that the proceedings be promptly commenced and determined.

The bill would repeal a June 1, 1988 expiration date for the act.

MCL 125.2328 et al.

The Revised Judicature Act provides that a property owner may recover possession of his or her property by summary proceedings when a tenant remains on the property illegally. House Bill 4603 would amend the act to specify that this provision would not apply to a tenant of a mobile home park unless the tenancy or lease was terminated for just cause. Under the bill, "just cause" would mean one or more of the following:

- Use of the mobile home site by a tenant for an unlawful purpose;
- Failure by a tenant to comply with a lease or agreement by which the tenant holds the premises, or with a rule or regulation of the park which was reasonably related to either the health, safety or welfare of the park, its employees, or its tenants; to the quiet enjoyment of the other park tenants; or to maintaining the physical condition or appearance of the park or mobile homes to protect the park's value or to maintain its aesthetic quality or appearance;
- A violation by the tenant of rules promulgated by the Department of Public Health regarding water supply, sewage, garbage disposal and so forth;
- Intentional physical injury by the tenant to other tenants or to mobile home park personnel, or intentional physical damage to the property of the mobile home park or other tenants' property;
- Failure of the tenant to comply with a local ordinance, state law, or governmental rule or regulation relating to mobile homes;
- Failure of the tenant to make timely payment of rent or other lease or rental agreement charges on three or more occasions during a 12-month period and for which the landlord has commenced summary proceedings;
- Conduct by the tenant upon mobile home park premises which constitutes a substantial annoyance to other tenants

or to the park, after notice and an opportunity to make amends;

- Failure of the tenant to maintain his or her mobile home or site in a reasonable condition, consistent with aesthetics appropriate to the park;
- Condemnation of the mobile home park;
- Changes in the use or nature of the park; and
- Public health and safety violations by the tenant.

Under the bill, a mobile home park tenant would have the right to request, within ten days of receiving an eviction notice, an in-person conference with the park owner or operator or with the owner or operator's representative. The conference would be held at the mobile home park within 20 days, at a time and date established by the landlord, and the tenant could be accompanied by counsel. These provisions would not affect a landlord's right to commence summary proceedings pursuant to the demand for possession. In every action, the tenant would be required to pay all rent when due while the action was pending, and the landlord could accept such payment without prejudice to the action.

If a tenancy in a park were terminated for just cause, the tenant could sell his or her mobile home on-site, as provided in the Mobile Home Commission Act, subject to the following conditions:

- a) The tenant could sell or move the mobile home within 90 days after the date of the judgment of possession, except that, if the mobile home park owner or operator denied tenancy to a person making a bona fide offer to purchase the mobile home within the 90 day period, or any proper extension of the time period, then the time period could be extended another 90 days;
- b) The tenant would be required to pay all rent and other charges for the site on time during the 90-day period, or any proper extension of the above time period. If the tenant failed to do so the landlord would be entitled to seek an immediate writ of restitution for possession of the mobile home site, as provided by the act;
- c) Ten days after the date of the judgment of possession, the landlord could disconnect all mobile home park-supplied utility services;
- d) Within ten days after the date of the judgment of possession, the tenant would be required to provide the landlord with proof that the mobile home had been properly winterized by a licensed mobile home installer and repairer. Failure to provide the proof of winterization in time would entitle the landlord to seek an immediate writ of restitution for possession of the mobile home site, as provided by the act;
- e) The tenant would be required to continue to maintain the mobile home and mobile home site in accordance with the rules the regulations of the park; and,
- f) The mobile home park would be required to provide the tenant with reasonable access to the mobile home and the mobile home site for the purpose of maintaining the home and site and selling the home.

The bill would require a judgment for possession resulting from an action to terminate a mobile home tenancy for just cause to include an explanation of the tenant's right to sell the mobile home on-site, as provided in House Bill 5602.

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Under the bill, in every action to terminate a tenancy for just cause the court would be required to award liquidated damages to the prevailing party, as established in the tenant's lease or agreement or in the park rules or regulations. The lease, agreement, or rules or regulations could provide for liquidated damages in an amount not to exceed \$500 in the district court, and \$300 for each appellate level. The liquidated damages would not be construed as a penalty.

MCL 600.5714

FISCAL IMPLICATIONS:

According to the Mobile Home Commission, the bill would have no fiscal implications for the state. (5-11-88)

ARGUMENTS:

For:

Unlike tenants living in apartments or homes, mobile home park tenants incur significant additional expenses when evicted. It often costs thousands of dollars to move a mobile home. Poor and fixed-income elderly mobile home park tenants are perhaps the most victimized, since they frequently cannot pay these expenses and must abandon their mobile homes at the site. By guaranteeing mobile home park tenants the right to sell their homes on-site, the bills would correct this inequity in the law.

For:

The bill is necessary to amend inequities in present laws: it would assure mobile home tenants of the right to sell their homes on-site, and would provide mobile home park owners and managers with the means to evict those tenants who break park rules, do not maintain their homes in satisfactory condition, or consistently fail to pay rent when due.

Against:

The "just cause" provision contained in House Bill 5603 is so broadly defined that at best it would have no effect on the current eviction practices which are so onerous to mobile home park tenants; at worst it would abrogate defenses that tenants currently possess under the summary proceedings provisions of the Revised Judicature Act. A tenant, for example, who is unable to afford new skirting for his or her trailer and who is evicted for "just cause" under the "aesthetics" provision of the bill, is likely to be evicted even though the action may be retaliatory in nature (e.g., the tenant is really being evicted for joining a mobile home park tenant union, or for appearing at a legislative public hearing to exercise first amendment rights to speak about conditions in mobile home parks). The retaliation could not be considered by a judge or jury who finds a "just cause" basis for the eviction. The "just cause" provision would operate to obscure defenses currently available to mobile home park tenants.

Against:

In return for granting mobile home park tenants the "right" to sell their homes on-site, House Bill 5603 would impair the existing rights of mobile home tenants, as compared to other tenants. Under current law it is illegal to evict a tenant for withholding rent pending the resolution of the eviction case in court. Although a court may order a tenant to pay current rent to the court pending a resolution of the case, the court cannot require tenants to pay rental

arrears. If a court cannot order tenants to pay this rent into the court, then mobile home park tenants should not be required to pay it to landlords, as the bill would require. The provision in the bill that allows landlords to obtain eviction orders without presenting a case in court is also directly contrary to current court rules governing eviction procedures adopted by the Michigan Supreme Court, which prohibit the execution of a writ of restitution (the actual eviction of a tenant by a court-bailiff) prior to judgment. This provision removes a tenant's basic fundamental right to trial and to a court hearing.

Against:

House Bill 5603 would allow a court to "award liquidated damages to the prevailing party, as established in the tenant's lease or agreement or in the park rules or regulations, in an amount not to exceed \$500 in the district court and \$300 for each appellate level." This provision was originally worded to allow a court to award attorney fees to the prevailing party. The new provision is, in effect, the same as the old provision. Attorney fees provisions originated in laws involving important public policy principles that Congress or state legislatures wanted to enforce. For example, the Michigan Elliott-Larsen Civil Rights Act permits an award of attorney fees to a prevailing "complainant." The idea is to encourage persons who have been discriminated against to seek counsel and sue defendants who violate civil rights laws. If the plaintiff wins, the defendant must pay the plaintiff's attorney fees, which encourages attorneys to take these cases. However, if the plaintiff loses, the defendant is not awarded attorney fees as the prevailing party. Instead, the penalty for the plaintiff who loses is that the attorney cannot collect fees from the defendant. The same principle applies under the Michigan Consumer Protection Act. This provision in the bill is contrary to all legal precedent in the state, and would set dangerous legislative precedent which would likely be opposed by civil rights and consumer advocates. The practical result would be that it would have a very disturbing chilling effect on perhaps the most basic and fundamental of constitutional rights, the right to be heard and to defend oneself in court.

POSITIONS:

A representative from the Michigan Mobile Home Owners Association testified before the House Urban Affairs Committee in support of the bills. (5-10-88)

The Michigan Manufactured Housing Association testified in support of the substitute bills. (5-13-88)

The Michigan Mobile Home Commission supports the bills. (5-10-88)

The Michigan Consumers Council does not support the bills because of the liquidated damages provision contained in House Bill 5603. (5-13-88)

A representative from Michigan Legal Services Assistance Program testified before the House Urban Affairs Committee in opposition to the bills. (5-10-88)

The Housing Assistance Foundation does not support the bills. (5-10-88)

The Department of Social Services has no position on the bills. (5-11-88)

The Department of Commerce takes no position on the bills. (5-11-88)