

EVICTION RECORD EXPUNGEMENT

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House Bill 5238 as passed by the House
Sponsor: Rep. Jimmie Wilson, Jr.
Committee: Economic Development
and Small Business [Discharged]
Complete to 12-13-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5238 would amend the Revised Judicature Act to allow the expungement of eviction records under certain circumstances.

Under the bill, a district court or municipal court, as applicable, could order the expungement of records for an eviction proceeding under Chapter 57 or 57A of the Revised Judicature Act if any of the following apply:¹

- The court determines that the plaintiff's action is sufficiently without a basis in fact or law, including a lack of jurisdiction.
- A judgment for possession (eviction order) was entered at least three years before the motion to expunge the records, the court determines that the expungement is clearly in the interests of justice, and the interests of justice are not outweighed by the public's interest in knowing about the records. (In making this determination, the court would have to consider circumstances beyond the tenant's control that led to the eviction and any other extenuating circumstances under which the eviction order was granted.)
- The proceeding was brought when a person remained on the premises after being served an eviction notice to quit the premises for nonpayment of rent, or after the termination of their lease agreement, and a judgment of possession was not entered.
- The judgment was a judgment by stipulation of the parties and the moving party has complied with the terms of the stipulated agreement.
- The judgment, including a judgment of dismissal, was entered in the moving party's favor.

A court could order the expungement of eviction records under Chapter 57 or Chapter 57A upon the motion of a tenant, manufactured home park resident, or landlord, or upon the court's own motion, if at least one of the following applies:

- The premises were sold under the foreclosure of a mortgage or land contract, the tenancy was terminated because the defendant remained on the premises after the time limited by law for the redemption of the premises, and the defendant either vacated the premises before the eviction proceedings were filed or did not receive an eviction notice at least 90 days before the proceedings were filed.
- The eviction proceedings were filed during the state of emergency declared under Executive Order No. 2020-4,² or any extension of that order.

¹ Chapter 57 of the Revised Judicature Act pertains to summary proceedings to recover possession of premises (eviction proceedings), while Chapter 57A pertains to the termination of tenancy in a mobile home park.

² Governor Whitmer issued Executive Order No. 2020-4 in response to the COVID-19 pandemic:
<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-04.pdf>.

If the court determines that a record should be expunged, it would have to order to set aside the judgment and expunge the *official records* of the action pertaining to the party that made the motion for expungement. Upon the entry of the order, the judgment would be deemed not to have been entered, and the moving party could answer accordingly any questions relating to its occurrence.

Official records would mean all records, documents, and evidence relating to the eviction proceedings that are maintained by the court, such as the complaint, other pleadings, a proof of service, and court findings.

A motion for an expungement would not be subject to the \$20 motion fee for civil actions.

MCL 600.8371 and proposed MCL 600.5755

BRIEF DISCUSSION:

According to testimony before the Economic Development and Small Business Subcommittee on Housing, many people have old eviction-related notices that linger on their records and prevent them from securing housing. However, most of these records, including rent payment issues, are reportedly resolved before ultimately resulting in an eviction. Supporters of House Bill 5238 argue that by automatically expunging notices that do not result in evictions and by expunging other records, with some exceptions, the bill would better allow people to access housing without facing discrimination.

Opponents of House Bill 5238, however, raise concerns that the bill does not require enough time to have passed before a record is expunged. They argue that the bill would limit property owners' ability to perform background checks in order to ensure that their other tenants are protected and that property owners should be able to know if a potential tenant is unlikely to pay rent based on their record.

FISCAL IMPACT:

House Bill 5238 would have an indeterminate fiscal impact on local court funding units. Costs would be incurred depending on how provisions of the bill affected court caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on whether additional court-imposed fee revenue is generated.

POSITIONS:

Representatives of the following entities testified in support of the bill (12-5-24):

- Rent is Too Damn High
- We the People Action Fund

The following entities indicated support for the bill (12-5-24):

- Michigan's Children
- Voting Access for All Coalition

A representative of the Rental Property Owners Association of Michigan testified in opposition to the bill. (12-5-24)

The following entities indicated opposition to the bill (12-5-24):

- Apartment Association of Michigan
- Home Builders Association of Michigan
- Michigan Bankers
- Michigan Manufactured Housing Association
- Michigan Realtors
- National Federation of Independent Business
- Property Management Association of Michigan

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.