



**House
Legislative
Analysis
Section**

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**MOBILE HOME PARK TENANTS
RECEIVED**

**Senate Bill 912 (Substitute H-2)
First Analysis (9-21-88)**

OCT 07 1988

**Sponsor: Sen. Harmon Cropsey
Senate Committee: Local Government and Veterans
House Committee: Urban Affairs**

Mich. State Law Library

THE APPARENT PROBLEM:

Mobile home park tenants have long complained that Michigan law treats those who own their mobile home, but rent space in a park, in the same way it treats other tenants, when, in fact, mobile home tenancy is considerably different. Tenants in an apartment building, for example, who receive a 30-day eviction notice, have 30 days to pack their belongings, find another apartment, and relocate. Mobile home owners, on the other hand, must either move their mobile home to another park, or attempt to sell the home in the park they are being evicted from. Although administrative rules governing mobile home parks require that tenants be offered a minimum one-year lease, the rules do not require leases to be renewed. Also, many tenants apparently do not exercise their right to a year's lease. As a result, whether a lease is not renewed or not accepted, the park owner can give a 30-day notice to quit without cause.

Problems also have been identified concerning the ability of mobile home park residents to sell their home on-site. According to the Mobile Home Commission, in response to the law's prohibition against parks' charging an exit fee, the park industry began to deny tenants the right to sell their home on-site. Although the commission promulgated a rule in the late 1970s to protect that right, the rule was overturned by the Michigan Court of Appeals as being beyond the commission's authority. It is reported that tenants are still being denied in-park sales and, in some cases, park owners will allow a home to be sold only to them, if it is sold at all, at a fraction of its worth.

Finally, 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 to intimidate residents, possibly to induce tenants to move an older home that may be unattractive or not large enough for the site to generate sufficient rental income.

THE CONTENT OF THE BILL:

The bill would amend the Mobile Home Commission Act to prohibit 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, at the expense of the mobile home park.

Senate Bill 912 is tie-barred to House Bill 5603, which would add to the Revised Judicature Act a process for the termination of a mobile home park resident's tenancy for "just cause." Under Senate Bill 912, 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. The bill would allow a lease or rental agreement, or rules adopted under such an agreement, to include a provision requiring liquidated damages of up to \$500 for an action in district court and up to \$300 for each appellate level to be awarded to the prevailing party in a contested action to terminate a mobile home park tenancy for just cause.

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

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- 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. The bill would specify that the pursuit in court of the lawful rights of a licensee would not constitute a violation of the act, regardless of the outcome of the court action. 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 November 1, 1988 expiration date for the act.

The bill is tie-barred to House Bill 5603, and would take effect May 1, 1989.

MCL 125.2328 et al.

HOUSE COMMITTEE ACTION:

The House Urban Affairs Committee adopted a substitute for Senate Bill 912 that is virtually identical to the committee's version of House Bill 5602, which passed the House in May of this year and was later used as a vehicle to extend the sunset provision of the Mobile Home Commission Act. The House substitute for Senate Bill 912 differs from the Senate-passed version of the bill mainly in that it does not contain language to prohibit the termination of a mobile home park tenancy for just cause; those provisions are now contained in House Bill 5603 (H-3), which passed the House on September 20, 1988.

FISCAL IMPLICATIONS:

According to the Mobile Home Commission, the bill has no fiscal implications for the state. (9-20-88)

ARGUMENTS:

For:

The bill, and its companion bill, House Bill 5603, would recognize the unique relationship that exists between mobile home park tenants and park owners. Unlike tenants living in apartments or homes, mobile home park residents incur significant additional expenses when evicted. A mobile home owner may have to pay thousands of dollars to move the home, on top of having to find a suitable park to move it to, or try to sell the home. Mobile home park tenants who are poor, or who are elderly and on a fixed income, are perhaps the most victimized, since they frequently cannot pay the high moving expenses and must abandon their home at the site. It is even alleged that some unscrupulous parks will evict tenants in order to buy their home at a bargain-basement price. In other situations, a park may simply want to upgrade its image and rid itself of older, unattractive homes. Or, because

some older homes are relatively small, a park might want to rent sites for newer, larger models that will generate more rental income.

The bill would safeguard the right of a mobile home owner to sell his or her home on-site. By assuring tenants the right to on-site sales, the bill would benefit both tenants and the mobile home industry, since homes sold on-site appreciate in value. Further, in order to prevent park owners from taking advantage of a resident's termination to buy the home at a cut-rate price, the tenant would have the right to have the home appraised, and the price could not be less than the appraised value, if the home were being sold to the park owner or operator.

Against:

The liquidated damages provisions in Senate Bill 912 and its companion bill, House Bill 5603, are inequitable, inappropriate, and unnecessary. Considering the comparative wealth of mobile home park tenants and park owners, as well as their relative bargaining positions, liquidated damages would clearly impose a much greater burden on the tenants, would amount to a penalty on tenants for defending an eviction action and could discourage tenants from asserting legitimate claims. In addition, in most eviction proceedings, there are no clear winners or losers: while the judge may award the landlord possession of the premises, the judge also may find that some of the tenants' claims are legitimate as well. At the very least, the bills should allow liquidated damages to be awarded at the judge's discretion, rather than mandating that they be awarded if a lease contained a liquidated damages provision.

Furthermore, liquidated damages are typically used when the parties entering into a contract anticipate that the amount of actual damages, upon a breach of the contract, will not be ascertainable. Under the bill, however, it appears that the liquidated damages would be for the purpose of paying the prevailing party's attorney fees (as the provision was originally drafted under a parallel bill, House Bill 5602). In this country, awarding attorney fees is the exception, rather than the rule, and is usually provided for statutorily — such as in Michigan's Elliott-Larsen Civil Rights Act and the Consumer Protection Act — in order to encourage persons who have been discriminated against to sue defendants who violate their rights. Attorney fees also might be awarded if a losing party's action or defense was frivolous, and awarding costs already is adequately provided for both in the Michigan Court Rules (MCR 2.265) and in the Revised Judicature Act (MCL 600.2591).

POSITIONS:

The Mobile Home Commission supports the bill. (9-20-88)

The Office of Services to the Aging supports the bill. (9-21-88)

Legal Services of Southeast Michigan, Inc. does not support the bill. (9-20-88)

The Michigan Consumers Council is neutral on the bill. (9-20-88)

The Department of Social Services is reviewing the bill and has not yet taken a position on it. (9-21-88)