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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 912 (Substitute S-1 as passed)  
House Bill 5603 (Substitute S-2 as passed)  
Sponsor: Senator Harmon Cropsey (Senate Bill 912)  
Representative Nelson Saunders (House Bill 5603)  
House Committee: Urban Affairs (House Bill 912)  
Senate Committee: Local Government and Veterans

Mich. State Law Library

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### **RATIONALE**

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 Code 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.

### **CONTENT**

#### Senate Bill 912 (S-1)

The bill would amend the Mobile Home Commission Act to do the following:

- Prohibit the termination of a mobile home park tenancy except for just cause, and define "just cause".
- Allow a resident evicted for just cause to sell his or her mobile home on-site if certain conditions were met.

- Require the resident to continue paying rent and other charges during a just cause termination action.
- Give a mobile home park resident the right to have his or her home appraised if it were being sold to the park owner or operator after termination of the tenancy for just cause.
- Provide for liquidated damages in an action to terminate a tenancy.
- Regulate mobile home park rules that governed the physical condition and aesthetics of mobile homes in the park.
- Allow physical and aesthetic standards that otherwise would be disallowed if the park were changing its "method of doing business" and gave residents at least one year's notice.
- Provide for penalties for violations of the Act, but specify that the Department of Commerce and the Mobile Home Code Commission would have no authority to take any action against a mobile home park owner or operator for a violation of the bill's just cause termination provisions.
- Repeal the Act's sunset date.

#### House Bill 5603 (S-2)

The bill would amend the Revised Judicature Act to specify that a tenant of a mobile home park would not be considered to be holding over under the Act, unless the tenancy or lease agreement was terminated for just cause, as proposed in Senate Bill 912. (Under the Act, a property owner may recover possession of the property by summary proceedings when the tenant "holds over" (remains on the property) after not paying rent due within seven days of receiving a written demand for possession.) An action to recover possession of a mobile home site from a tenant of a mobile home park would have to be brought as provided in Chapter 57 of the Act, which governs the summary proceedings to recover possession of premises, except as specifically proposed in Senate Bill 912.

The bills are tie-barred. A more detailed description of Senate Bill 912 (S-1) follows.

#### "Just Cause"

The tenancy of a mobile home park resident could not be terminated unless there were just cause for the termination or refusal. "Just cause" would mean one or more of the following:

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- Use of a mobile home site by the resident for an unlawful purpose.
- Failure by the resident to comply with his or her lease or agreement or a rule or regulation of the mobile home park that was reasonably related to 1) the health, safety, or welfare of the park, its employees, or residents; 2) the quiet enjoyment of the other residents of the park; or 3) maintaining the physical condition or appearance of the park or the mobile homes in it to protect the value of the park or maintain its aesthetic quality or appearance.
- A violation by the resident of rules promulgated by the Department of Public Health for mobile home parks.
- Intentional physical injury by the resident to the personnel or other residents of the park, or intentional physical damage by the resident to the property of the park or residents.
- Failure of the resident to comply with a local ordinance, State law, or governmental rule or regulation relating to mobile homes.
- Failure of the resident to pay rent or other lease or rental charges on time on three or more occasions during a 12-month period, if the park owner or operator had served a written demand for possession for nonpayment of rent under the Revised Judicature Act.
- Conduct by the resident on the park premises that constituted a substantial annoyance to other residents or to the park, after notice and an opportunity to cure.
- Failure of the resident to maintain the mobile home or home site in a reasonable condition consistent with aesthetics appropriate to the park.
- Condemnation of the mobile home park.
- Changes in the use or substantive nature of the park.
- Public health and safety violations by the resident.

#### Just Cause Termination Action

Within 10 days of service of a demand for possession of premises for just cause, the resident would have the right to request, by certified or registered mail to the park owner or operator, an in-person conference with the owner or operator or his or her representative. If requested on time, the conference would have to be held at the park at a time and date set by the owner or operator but within 20 days after the request. The resident could be accompanied by counsel at the conference. This provision would not affect the right of the owner or operator to commence summary proceedings pursuant to the demand for possession.

In every action to terminate a mobile home park tenancy for just cause, the resident would have to continue paying all rent and other charges to the owner or operator when due after the demand for possession of the premises and while the action was pending. The owner or operator could accept all such payments without prejudice to the eviction action. If a rental payment were not made on time, the owner or operator could proceed with the repossession action without prejudice to the just cause termination action.

Every judgment for possession resulting from an action to terminate a mobile home park tenancy for just cause would have to set forth the resident's right to sell a mobile home on-site, the conditions of that right, and the consequences of a resident's failure to meet those conditions (as described below).

In every contested action to terminate a mobile home park tenancy for just cause, the court would have to award liquidated damages to the prevailing party if a provision requiring such damages were included in the lease or

rental agreement governing the tenancy or rules or regulations adopted under the lease or agreement.

The bill specifies that the proposed section providing for just cause terminations would not prohibit a change of the rental payments or the terms or conditions of tenancy following the termination of a tenancy or the expiration of a written lease for the site.

#### On-Site Sale upon Termination

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

- The resident would have to sell or move the home within 90 days after the date of the judgment of possession, although the time period could be extended to 90 days after the park owner or operator denied tenancy to a person making a bona fide offer to purchase the home within the 90-day period or an extension.
- The resident would have to pay all rent and other charges for the site on time during the 90-day period or its extension. Failure to do so would entitle the owner or operator to seek an immediate writ of restitution. "Rent and other charges" would not include liquidated damages.
- Upon the expiration of 10 days after the date of judgment of possession, the owner or operator could disconnect all mobile home park-supplied utility services.
- Within 10 days after the date of the judgment the resident would have to give the landlord proof that the home had been properly winterized by a licensed mobile home installer and repairer. Failure to do so would entitle the owner or operator to seek an immediate writ of restitution.
- The resident would have to continue to maintain the home and site according to the rules and regulations of the park.
- The park would have to give the resident reasonable access to the home and the site for maintaining them and selling the home.

If, after termination of the resident's tenancy for just cause, a resident of a mobile home park sold his or her mobile home to the park owner or operator, or to any entity in which the owner or operator had an interest, the resident would have the right to have the home's value appraised, and the sale price could not be less than the appraised value.

#### Park Rules/Physical Condition of Home

The bill provides that, except as follows, it would be an unfair or deceptive practice for an owner or operator of a mobile home park to deny a resident the right to sell his or her mobile home, on-site, at a price determined by the resident, to any purchaser if the purchaser qualified for tenancy and the mobile home met the conditions of written park rules or regulations. This provision would not apply to seasonal mobile home parks.

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 mobile home park in which they were located, 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 on-site. The resident would have the burden of going

forward in a suit against the park owner or operator for violating this provision.

- The standards incorporated in the written park rules or regulations governing the physical condition and aesthetic characteristics of mobile homes in the park would have to apply equally to all residents.
- A mobile home sold on-site would have to conform with Public Act 133 of 1974, which provides for fire protection in mobile homes.
- A park owner or operator could charge a reasonable fee to inspect the mobile home before sale. The charge could not exceed \$30 or the amount charged for building permit inspections by the municipality in which the home was located, whichever was higher.
- Any charge connected to the on-site, in-park sale of a mobile home, other than the inspection fee, and the commission or fee charged by a licensed mobile home dealer engaged by the seller to transact the sale, would be an entrance or exit fee in violation of the Act.
- The standards governing the physical condition of mobile homes and the aesthetic characteristics of mobile homes in the park, as incorporated in the written park rules, could not be designed to defeat the intent of these provisions. This would not apply if the park were changing its method of doing business (as described below) and gave all affected park residents at least one year's notice, unless a different notice was otherwise provided by law.

Except as provided above regarding the age or size of a mobile home, a mobile home park owner or operator would have the burden of going forward to show compliance with these provisions.

A change in a mobile home park's method of doing business would include but not be limited to any of the following:

- Conversion to a mobile home park condominium.
- Conversion to total rental of both mobile home site and park-owned mobile homes.
- Changes in use of the land on which the park was located.

Notwithstanding the preceding provisions, a mobile home park could require a mobile home to be moved to a comparable site within the park at the expense of the park.

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:

- 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 residents of the park at the time the rule was adopted until after one year's notice to them.
- Prohibited a resident from keeping those pets that were previously approved under prior park rules, except dangerous animals.

#### Damages/Penalties

A lease or rental agreement or rules or regulations adopted under a lease or rental agreement could include a requirement that liquidated damages be awarded to the prevailing party in a contested action to terminate a tenancy in a mobile home park for just cause brought under the Revised Judicature Act. The liquidated damages could not exceed \$500 for a district court action and \$300 for each appellate level, and could not be construed to be a penalty.

If, after notice and a hearing as provided in the Administrative Procedures Act, a person were determined to have violated the Act, the Mobile Home Code Commission could impose one or more of the following penalties:

- Censure.
- Probation.
- Placement of a limitation on a license.
- Suspension or revocation of a license. When taking either action, the Commission could request the appointment of a receiver.
- Denial of a license.
- A civil fine of up to \$10,000. A fine would have to be credited to the Commission Fund.
- A requirement that restitution be made.

The bill specifies that this section would not prohibit actions from being taken under other sections of the Act. The bill also provides 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 action.

If the Department of Commerce found that the 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 proceedings would have to be promptly commenced and determined.

MCL 125.2328 et al. (Senate Bill 912)  
600.5714 (House Bill 5603)

## ***FISCAL IMPACT***

### **Senate Bill 912 (S-1)**

Senate Bill 912 could result in an indeterminate increase in State revenue if fines allowed in Section 43 for violations of the Act were actually levied.

### **House Bill 5603 (S-2)**

The bill would have no fiscal impact on State or local government.

## ***ARGUMENTS***

### ***Supporting Argument***

The bill 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.

Senate Bill 912 (S-1) would address these problems in two ways: by prohibiting mobile home parks from evicting tenants except with just cause, and by providing that those whose tenancy was terminated for just cause would have

90 days from the date of the judgment to sell their home on-site, and an additional 90 days if the park rejected a legitimate buyer. 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. Also, 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.

Park owners and operators, too, would have certain protections under the bill. For example, residents given an eviction would have to continue paying rent during the proceedings, and tenants would have to continue to maintain the home and site according to park rules. Park owners also could deal with an unsightly home by requiring the tenant to move it to another location in the park (at the park's expense). Another provision that would protect parks as well as consumers would require a tenant to have his or her home winterized, to secure the right to an on-site sale.

### **Supporting Argument**

Regulating mobile home park rules would benefit both residents and parks. The Senate bill would prevent park owners or operators from making rules arbitrarily or for the purpose of intimidating residents, and would "grandfather in" (for up to one year after the rule was made) children and pets in a park before a rule prohibiting them was issued. On the other side, park owners and operators could change their rules if the park's method of doing business changed, and could require tenants to move within the park.

### **Opposing Argument**

Senate Bill 912 (S-1) could be worse for mobile home park tenants than the current Act or no act at all. While the "just cause" provisions purport to help tenants, the provisions would give park owners and operators such a wide basis for eviction that they would make little change in the present situation. In fact, the bill could even make park evictions easier. This is particularly true in regard to the provision that would allow eviction for violating park rules, which can include such capricious standards as requiring grass to be no longer than two inches, and prohibiting the hood of a car from being lifted in the park. Rules in many cases are so specific and so encompassing that it is impossible to live in the park without breaking a rule at some point. Because of the nature of mobile home park rules, it would not be unreasonable to impose on park managers a duty to show that the park rule was reasonable and to require that park managers provide notice and an opportunity to cure a violation before basing an eviction solely on a rule violation.

### **Opposing Argument**

The Senate bill's liquidated damages provisions 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 bill 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 House 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).

### **Opposing Argument**

Requiring a park tenant to pay rent while an eviction action was pending would be extremely regressive. Michigan law has long recognized the right of tenants to withhold rent in certain circumstances, such as when a landlord is notified of serious maintenance problems and refuses to make the necessary repairs. Michigan courts also have held that a landlord invalidates an eviction notice by accepting rent after serving the notice on the tenant, and the landlord must begin the eviction process again (Park Forest of Blackman v Smith, 112 Mich App 421 (1982)). The theory behind these decisions is that accepting rent after a lease is terminated sends mixed signals to the tenant who reasonably relies on the acceptance as an indication that the landlord is re-establishing the tenancy. This does not prevent the landlord, however, from obtaining a judgment for rent owed in addition to the eviction judgment, after trial. There is no reason that mobile home park tenants should be denied rights available to other tenants, especially in a bill designed to increase mobile home residents' protections.

### **Opposing Argument**

Giving a tenant the right to a conference with the park owner appears to be an attempt to develop some form of alternative dispute resolution, but would accomplish little and could even hurt the tenant. Meeting with the park owner or operator would be a far cry from having an objective third party try to resolve the dispute. Obviously, the party bringing an eviction action is not impartial. The tenant, however, believing he or she was getting an impartial hearing, could make statements against his or her own interest that could later be used against the tenant in court. The provision should be removed: if the parties are willing and able to resolve their differences informally, there is nothing now to stop them from doing so.

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