



**House  
Legislative  
Analysis  
Section**

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### ***THE APPARENT PROBLEM:***

The Revised Judicature Act bars eviction when it is in retaliation for any of a number of lawful tenant activities, such as attempting to enforce or secure rights, reporting health or safety code violations to authorities, or participating in a tenant organization. The act also bars eviction without cause from housing operated by a unit of local government. In 1982, the court of appeals held that the retaliatory eviction statute did not apply to fixed-term leases, but only to month-to-month tenancies (Frenchtown Villa v. Meadors, 117 Mich. App. 683). The court acknowledged that its holding would allow "an unscrupulous landlord [to] accomplish the desired result of a retaliatory eviction, the intimidation of tenants, through the use of fixed-term leases." The court expressed abhorrence of retaliatory actions of any type, but found the statute unambiguous in its failure to bar retaliatory actions in fixed-term lease situations. Many who share the court's attitude toward retaliatory evictions urge that the statute be amended to explicitly protect fixed-lease tenants.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Revised Judicature Act to generally extend the tenant protections of the retaliatory eviction statute to situations where a fixed-term lease had expired. However, the protections would not apply when the fixed-term tenant had reported health or safety violations which were caused primarily by the tenant's lack of reasonable care, nor would they apply when the fixed-term tenant was in default of rent (and rent payments were not being paid into an escrow account or to a receiver), nor when the landlord had put the property up for sale before the lease expired.

The law establishes a presumption in favor of the tenant when retaliatory eviction is alleged and the tenant had asserted his or her rights (as specified by the law) within the previous 90 days. The bill would extend this presumption to fixed-term lease situations. It also would require that whenever a court found in favor of the landlord, whether the case involved a month-to-month or a fixed-term lease, the court would have to consider whether the sanctions of a frivolous defense should be imposed upon the tenant.

MCL 600.5720

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that the bill would have no fiscal implications. (5-24-89)

### ***ARGUMENTS:***

#### ***For:***

A tenant should be able to assert legal rights without being subject to eviction for doing so. Month-to-month tenancies are already protected against retaliatory evictions, and

## **NO RETALIATORY EVICTION AT END OF LEASE**

House Bill 4536 (Substitute H-3)

First Analysis (5-25-89)

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Sponsor: Rep. Ted Wallace

Committee: Judiciary

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many thought the law also protected tenants living under fixed-term leases, until the court of appeals ruled otherwise. The bill would extend to fixed-term tenants basically the same protections against unfair evictions that month-to-month tenants have. However, the bill would place some reasonable limitations on a fixed-term tenant's ability to use allegations of retaliatory eviction. A landlord would still be able to evict a fixed-term tenant who had damaged the property, who was in arrears on rent, or who was inhabiting a house or apartment building that the owner had put up for sale. Further, a tenant who raised a frivolous defense would be subject to the law's sanctions — that is, the payment of costs and fees — for such behavior.

#### ***Against:***

The bill would unfairly interfere with the rights of property owners. One of the purposes of a fixed-term lease is to allow the property owner to have the property back, so to speak, at the end of the term. When a lease expires, so does the tenancy. The court of appeals recognized this in Frenchtown Villa when it said that "a landlord seeking repossession of premises upon the expiration of the term of a fixed lease does not terminate the tenancy, but merely seeks repossession pursuant to the termination that has already taken place." Under the bill, a tenant could delay a legitimate eviction by asserting rights within 90 days prior to the end of the lease, and then claiming retaliatory eviction.

#### ***Against:***

The bill treats tenants differently from other people who might occupy a court with a frivolous action. Where in most situations, a prevailing party would have to move that an action or defense had been frivolous, in cases where a tenant alleged a retaliatory eviction, the court would automatically consider whether the sanctions of a frivolous defense should be applied.

**Response:** The provision is warranted because of the way a tenant can impede an owner's rightful repossession by raising a retaliatory eviction defense.

### ***POSITIONS:***

The Michigan Consumers Council supports the bill. (5-23-89)

The Michigan Association of Realtors opposed the original bill, but has not yet reviewed the substitute and does not have a position on the substitute bill at this time. (5-24-89)

H.B. 4536 (5-25-89)