

Act No. 72
Public Acts of 1998
Approved by the Governor
May 4, 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Berryman, Conroy, Gougeon, North, Bullard, Vaughn, V. Smith, Peters, A. Smith, DeBeaussaert, Young, Stallings, Byrum, Koivisto and Hart

ENROLLED SENATE BILL No. 392

AN ACT to amend 1978 PA 454, entitled "An act to regulate rental agreements for residential premises; to prohibit the inclusion by lessors of certain clauses or provisions in residential rental agreements; to require the disclosure by lessors of certain information; to require the inclusion of certain provisions in residential rental agreements; to regulate the commercial sale of printed rental agreement forms; and to prescribe penalties," by amending section 3 (MCL 554.633), as amended by 1991 PA 131.

The People of the State of Michigan enact:

Sec. 3. (1) A rental agreement shall not include a provision that does 1 or more of the following:

- (a) Waives or alters a remedy available to the parties when the premises are in a condition that violates the covenants of fitness and habitability required pursuant to section 39 of 1846 RS 84, MCL 554.139.
- (b) Provides that the parties waive a right established by 1972 PA 348, MCL 554.601 to 554.616, which regulates security deposits.
- (c) Excludes or discriminates against a person in violation of the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804, or the persons with disabilities civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607.
- (d) Provides for a confession of judgment by a party.
- (e) Exculpates the lessor from liability for the lessor's failure to perform, or negligent performance of, a duty imposed by law. This subdivision does not apply to a provision that releases a party from liability arising from loss, damage, or injury caused by fire or other casualty for which insurance is carried by the other party, under a policy that permits waiver of liability and waives the insurer's rights of subrogation, to the extent of any recovery by the insured party under the policy.
- (f) Waives or alters a party's right to demand a trial by jury or any other right of notice or procedure required by law in a judicial proceeding arising under the rental agreement.
- (g) Provides that a party is liable for legal costs or attorney's fees incurred by another party, in connection with a dispute arising under the rental agreement, in excess of costs or fees specifically permitted by statute.
- (h) Provides for the acquisition by the lessor of a security interest in any personal property of the tenant to assure payment of rent or other charges arising under the rental agreement, except as specifically allowed by law.
- (i) Provides that rental payments may be accelerated if the rental agreement is breached by the tenant, unless the provision also includes a statement that the tenant may not be liable for the total accelerated amount because of the landlord's obligation to minimize damages, and that either party may have a court determine the actual amount owed, if any.

(j) Waives or alters a party's rights with respect to possession or eviction proceedings provided in section 2918 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2918, or with respect to summary proceedings to recover possession as provided in chapter 57 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5701 to 600.5759.

(k) Releases a party from a duty to mitigate damages.

(l) Provides that a lessor may alter a provision of the rental agreement after its commencement without the written consent of the tenant, or, in the case of a rental agreement between a consumer cooperative that provides housing and a member of the consumer cooperative, without the approval of the board of directors of the cooperative or other appropriate body elected by members who are also tenants of the cooperative, except that an agreement may provide for the following types of adjustments to be made upon written notice of not less than 30 days:

(i) Changes required by federal, state, or local law or rule or regulation.

(ii) Changes in rules relating to the property that are required to protect the physical health, safety, or peaceful enjoyment of tenants and guests.

(iii) Changes in the amount of rental payments to cover additional costs in operating the rental premises incurred by the lessor because of increases in ad valorem property taxes, charges for the electricity, heating fuel, water, or sanitary sewer services consumed at the property, or increases in premiums paid for liability, fire, or worker compensation insurance.

(m) Violates the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922.

(n) Requires the tenant to give the lessor a power of attorney.

(2) A rental agreement shall not include a clause or provision that, not less than 90 days before the execution of the rental agreement, has been prohibited by statute or declared unenforceable by a published decision of the supreme court of this state or the United States supreme court relating to the law of this state.

(3) A provision or clause of a rental agreement that violates this section is void.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 352 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Wayne R. Snodgrass

Clerk of the House of Representatives.

Approved _____

Governor.