

# Legislative Analysis



## LAWFUL REENTRY BY LANDLORD: REVISE

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House Bill 5034 (Substitute H-2)

Sponsor: Rep. Pam Byrnes

Committee: Judiciary

### First Analysis (4-12-10)

**BRIEF SUMMARY:** Under the bill, a landlord would not be liable in a civil action for damages if the landlord reentered and took possession of a rental unit after the tenant died, if certain conditions were met. The bill would also limit the statute of limitations for recovery of damages for forcible entry or unlawful interference, under any circumstance, to one year from the date the cause of action arises.

**FISCAL IMPACT:** House Bill 5034 would have an indeterminate, but likely negligible, fiscal impact on the judiciary. Any fiscal impact would be the result of a reduction in court costs due to an expansion of the requirements for lawful reentry by a landlord.

### THE APPARENT PROBLEM:

The death of tenant who lives alone can be problematic for landlords. If there is no co-tenant, or if no heirs open an estate through the probate court or come to claim the deceased's possessions, landlords are forced to go through a lengthy and costly process before they can take possession of the rental unit, clear out the personal belongings of the deceased, and rent the unit to new tenants. (See **Background Information**.) The Property Management Association of Michigan has requested that the law be changed to allow for a quicker, less expensive process to regain possession of a rental unit that would avoid going through the probate court.

In a related matter, an action for damages when a landlord engages in forcible entry or unlawful interference may be filed either within one year from the date of the incident, or one year from the date the plaintiff becomes aware of the incident (for instance, the tenant may have been away for an extended period due to work, illness, or vacation or, in the case of a deceased tenant, the heirs did not have immediate knowledge of the tenant's death). Thus, the one-year extension based on discovery of the landlord's conduct can extend the landlord's liability for an indeterminate amount of time. Some would like this extension for after the discovery eliminated and simply provide for a one-year statute of limitation.

### THE CONTENT OF THE BILL:

The bill would, among other things, add to the circumstances under which a landlord could reenter and take possession of rental property without being subject to a lawsuit by the tenant so as to include when a tenant dies, if certain conditions were met.

Under current law, a tenant whose possession of a rental unit has been unlawfully interfered with by the owner, lessor, licensor, or their agents (landlord) is entitled to recover the amount of actual damages or \$200, whichever is greater, in addition to regaining possession of the premises. Actions by the landlord that constitute "unlawful interference" are set forth in statute and include such things as removing or destroying the tenant's personal property; changing the locks on the doors; using force or threats of force; and introducing noise, odors, or other nuisances to drive out the tenant.

The above provision does not apply if the landlord regained entry under a court order; interfered temporarily with possession in order to make needed repairs or inspections (if conducted according to law); or believed in good faith that the tenant had abandoned the premises, and, after diligent inquiry, had reason to believe the tenant did not intend to return and the current rent had not been paid.

House Bill 5034 would add another exception to the above. The bill would amend the Revised Judicature Act (MCL 600.2918) to specify that the provision discussed above would not apply where the owner, lessor, licensor, or their agents (landlord) can establish all of the following:

- The landlord knew or believed in good faith that the last surviving tenant had been deceased for at least 30 days.
- The landlord had not been notified in writing that the tenant's estate was being probated or provided with the name and address of a personal representative appointed by a probate court.
- The rent was overdue.
- At least 30 days before reentry, the landlord placed a notice on the door of the premises indicating the intent to reenter and take possession of the premises **and** the landlord made a reasonable attempt to notify the next of kin or emergency contact provided by the tenant, if the tenant had provided the landlord with the information. The owner, lessor, licensee, or their agents would not be responsible for incorrect contact information or for the contact's failure to respond to the notification within the 30-day period.

House Bill 5034 would also revise a provision regarding the statute of limitations for actions to recover damages for forceful entry or unlawful interference. Currently, an action to recover damages (for example, loss of property) under Section 2918 must be begun within one year from the time the cause of action arises (the date the landlord committed the forceful entry or unlawful interference) or becomes known to the plaintiff. The highlighted portion would be eliminated.

#### ***BACKGROUND INFORMATION:***

According to the Property Management Association of Michigan, if the heirs of a deceased tenant do not open an estate, only a personal representative appointed by a probate court has the authority to enter the apartment, collect personal belongings, or receive service of a landlord/tenant lawsuit. In such cases, the landlord must either wait for a creditor to initiate probate or incur the expense of opening probate himself or herself. Reportedly, these costs can run from a minimum of \$500 to approximately

\$1,000. In addition, the landlord incurs the costs of arranging for a court officer to empty the apartment, plus the loss of any unpaid rent and revenue that would have been earned had the landlord been able to rent the unit sooner. Even if the heirs open an estate, it can take up to six months before the process is worked through, the rental unit cleared of the deceased's personal belongings, and the unit turned back over to the landlord.

## **ARGUMENTS:**

### ***For:***

Supporters of the bill see it as a mechanism for landlords to recover possession of their rental units within a reasonable time after a tenant dies and to allow for the removal and disposal of unclaimed personal property on the premises without having the expense and delay of having to open an estate in probate court. According to industry members, especially in the case of lower-income tenants, there either are no heirs, no listing of next-of-kin, or if relatives are located, they are not interested in opening an estate or taking possession of the deceased's belongings. Even when heirs are located, they may not have the same sense of urgency to come and empty the rental unit in a timely manner, and often are unable or unwilling to pay the monthly rent until the unit is cleared out. Each month that the apartment or rental home is off the market, the landlord loses revenue. The time limits placed in the law by the bill and avoidance of probate court proceedings (which require belongings to be inventoried) would decrease the financial burden upon landlords and even allow them to use self-help to clear the rental units instead of paying for court officers to place the belongings on the curb.

Awareness of the expedited process that the bill would create could motivate renters to include contact information in lease agreements or with their landlords or to make wills detailing their wishes for the disposal of their possessions. Moreover, the bill's provisions would only be triggered when all of the conditions listed in the bill existed. Thus, the bill balances the interests of tenants and landlords by making clear the obligations of property owners and managers when a tenant passes away.

### ***For:***

By allowing an extended time period (one year after discovery of forcible entry or unlawful interference on the part of a landlord) in which plaintiffs can file an action, current law unfairly creates an indeterminate period of liability for landlords. The bill would address that.

### ***Response:***

A landlord who can support the belief that a rental unit has been abandoned and rent is past due is not liable under this provision of current law. By shortening the time frame during which an action can be filed, the bill could either pose difficulties for an individual in obtaining legal representation before the statute of limitation (SOL) expired or cause the individual to miss it entirely. Most civil actions have a two or three year SOL, therefore a one-year extension to allow for discovery of the landlord's conduct is not unreasonable. The bill, by eliminating this important protection for tenants or heirs, seems overly protective of landlords, whose liability for their conduct would be reduced. The extension should be preserved for those situations when a tenant was not immediately aware of the landlord's conduct, or for those times when an heir is not immediately located and the landlord regains possession of the unit and disposes of the

personal belongings without following the process currently required by law or as proposed by the bill.

***Against:***

There appear to be several concerns with the bill. First, it should be clarified that the bill is not establishing a "right of entry" for landlords to retake possession of a rental unit after a tenant dies. It is actually establishing a defense to a lawsuit brought by heirs of a deceased tenant to recover damages that occurred when a landlord forcibly entered the premises, or for the loss of personal property belonging to the deceased. If the purpose of the legislation is to clarify the lawful responsibilities of a landlord when a tenant dies without any known heirs or without a will, some feel that this provision may be better placed elsewhere in law.

Concerns have also been raised as to the weak noticing requirements on the part of the landlord. A simple text message or message left on an answering machine or in voicemail may suffice as a "reasonable effort" to contact an heir, not evidence that the person actually received the message. Plus, what would happen to the deceased's belongings if no emergency contact information were listed? Would valuable items be confiscated by the landlord? Would family heirlooms be thrown out on the curb? Under the bill, with its shortened time frames and the ability to avoid probate court unless another creditor opened an estate, distant or estranged heirs may not hear of the deceased's death until after all of the family treasures had been lost or disposed of.

***POSITIONS:***

A representative of the Property Management Association of Michigan testified in support of the bill. (3-17-10)

The Rental Property Owners Association of Michigan indicated support for the bill. (3-17-10)

Edward Rose and Sons (apartment developers and managers) supports the bill. (10-20-09)

The Apartment Association of Michigan indicated support for the bill. (10-21-09)

Representatives of VillageGreen and the Detroit Metropolitan Apartment Association indicated support for the bill. (10-21-10)

The Michigan Advocacy Project indicated neutrality on the bill. (10-21-10)

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