

HOUSE BILL 4957 (as originally introduced)

Sponsor: Rep. Perry Bullard

The Apparent Problem to Which the Bill Addresses Itself:

At present, section 2918 of the Revised Judicature Act prohibits a landlord from ejecting in a forcible and unlawful manner a person who is in possession of property. This prohibition has generally been construed by the courts to mean that force or threat of force must be directed against the person in possession, and not merely against the property (Shaw v. Hoffman, 1872, 25 Mich 162). As such, the changing of locks, the termination of utilities, or the boarding of doors is not considered an illegal method of obtaining possession.

Some persons believe that not only force, but any device which prevents a tenant from enjoying peaceful possession of the property which he/she possesses, should be deemed unlawful.

The Manner in Which the Bill Addresses Itself to the Problem:

The bill would permit a person who is in possession and who is unlawfully ejected or kept out of any lands or tenements, to recover triple damages or \$200, whichever is greater. The damages would have to be actual damages to be recovered. Ejection or efforts to prevent physical repossession of the property would be deemed unlawful if: (1) force or the threat of force was used to prevent peaceful possession; (2) personal property was removed without consent; (3) locks were changed or added without providing keys, to prevent peaceful possession; (4) the premises were boarded up to prevent possession; (5) the utilities were terminated by the owner or his agents; or (6) peaceful entry or possession was prevented in any other manner. The provisions of this act could not be waived.

Fiscal Implications:

The House Fiscal Agency states that there are no fiscal implications to the State of Michigan.

Argument For:

The present procedure has a particularly adverse effect on the poor and the aged who have little knowledge of their rights. This bill, by making certain tactics illegal, will serve to protect these people and others from the few unscrupulous landlords who attempt to operate without regard for the rights of their tenants and the strict requirements of the law regarding eviction procedure.

**Analysis Section
House of Representatives
Committee: Urban Affairs**

***Material in this analysis complete to 10-14-75.
Additional information may follow.***

Argument For:

The bill will give the various consumer and tenants' rights organizations a useful tool with which to help those who bring violations of the law to their attention. The provision of a minimum damage award should serve as an added deterrent to illegal action by landlords and will help to create a balance between the landlords and the tenants.

Argument For:

The state has set up a procedure, called the summary eviction procedure, to ensure that both tenants and landlords are afforded due process of law with regard to the question of who has the right to be in possession of a certain piece of property. That procedure can now be avoided by using various "self-help" remedies such as changing the locks and terminating the utilities; the bill, by making such self-help methods unlawful, will cause landlords to seek relief in the context of the established procedure where due process is assured.

Argument Against:

The bill is an overreaction to abuses by some landlords and goes substantially further than is necessary to correct those abuses. The bill applies broadly to all landlord-tenant relationships and makes no distinction between commercial, industrial, or residential property, or between the various types of residential property. Summary eviction procedures may well work for apartment dwellings but would be rather useless in evicting a non-paying "tenant" at a motel.

Argument Against:

Simplification of the present eviction procedure may be a better approach than this bill. At present, the procedure for eviction for non-payment of rent usually takes longer than a month, even when the landlord acts promptly at each step. Eviction for reasons other than non-payment of rent takes even longer. Self-help methods of eviction would not be used as frequently, and abuses associated with their use would be minimized if landlords were assured that their real estate investments would be protected by the eviction procedure.

Argument Against:

The bill does not treat landlords and tenants equally. Under the bill, tenants are permitted to collect triple actual damages. Landlords are only allowed to collect

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actual damages from tenants when damage to the rental unit occurs. Destruction of property by either the tenant or landlord should be treated in the same manner. Either both parties, or neither party, should be permitted to collect triple damages.

Suggested Amendments:

It has been suggested that landlords who offer less than 4 units for rent should be exempted from the provisions of the bill because they are usually not the ones guilty of the abuses and because complying with the bill would work an undue financial hardship on such small landlords.

The Michigan Committee on Law and Housing suggests that the language of the bill be clarified so that the recovery of triple damages is mandatory if unlawful ejection is proved. The Committee also suggests that reasonable attorney's fees be included in the amount recoverable.

Both the Committee and the Tri-County Landlords' Association have suggested that what constitutes abandonment of property by a tenant be clarified (page 2, line 1).

Positions:

The Michigan Consumers Council supports the bill. (10-3-75)

Michigan Legal Services supports the bill and considers it a priority item. (10-6-75)

The Michigan Committee on Law and Housing supports the bill. (10-3-75)

The Housing Assistance Foundation, Consumer Service Project, supports the bill and considers it a priority item. (10-3-75)

The Grand Rapids Tenants Union believes the bill will solve many problems faced by its clients. (10-7-75)

The Tri-County Landlord Association opposes the bill. (10-7-75)

The Public Interest Research Group in Michigan (PIRGIM) supports the bill provided the minimum damage award is increased to \$300 and attorney's fees and court costs are included to conform with House Bill 4433. (10-9-75)

The Greater Lansing Legal Aid Bureau believes that this bill should be given attention as a remedy for a serious problem faced by their low-income clients as tenants. (10-8-75)

The Michigan Landlords Association opposes the bill. (10-9-75)

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