

HOUSE BILL 4957 (proposed House committee substitute)

Sponsor: Rep. Perry Bullard

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

**Material in this analysis complete to 12-9-75.
Additional information may follow.**

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 receive triple damages or \$200, whichever is greater, plus costs and reasonable attorney fees. 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 force was used to prevent peaceful possession.

The bill would further permit a person who is in possession of premises whose possessory interest has been unlawfully interfered with to recover possession and the amount of his/her actual damages or \$200, whichever is greater, plus costs and reasonable attorney fees, for each occurrence.

Unlawful interference with a possessory interest would have occurred 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) doors, windows, or locks were removed to prevent possession; or (6) the utilities were terminated by the owner or his agents.

The bill provides that the above actions would not be unlawful if the owner, lessor, licensor, or land contract vendor, or their agents, could establish that they: (1) acted pursuant to a court order; (2) interfered only briefly with possession in a lawful manner to make necessary repairs; or (3) believed in good faith that the property had been abandoned, current rent had

not been paid, and no response had been received within 7 days of when the possessor should have received a mailed inquiry concerning the abandonment.

Under the bill, persons who lose possession or have their possessory interests interfered with, could go to circuit court with an action for possession, a claim for injunctive relief, and/or a claim for damages.

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.

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

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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 is worded to protect tenants from unscrupulous landlords. It does little to protect landlords from unscrupulous tenants. For example, under the bill, it would be unlawful for a landlord to change or add locks on a residence without providing the tenant with keys. However, it would still be lawful for a tenant to change or add locks on a residence without providing the landlord with keys.

Suggested Amendments:

(1) The Michigan Landlord's Association suggests that the language in the bill be rewritten so as to omit reference to "landlords" and tenants". Neutral language might make the bill more equitable to both groups. For example, it is possible for a tenant to interfere with a landlord's possessory interest, and the landlord should be protected from such interference just as the tenant would be.

The Association also suggests that the maximum damages provisions of the bill should be removed, since unscrupulous persons often take advantage of such provisions.

(2) The Public Interest Research Group in Michigan (PIRGIM) suggests that triple damages should be awarded not only in the case of force directed against persons, but also in the case of interference with possessory interest.

(3) The Housing Owners of Michigan Exchange (HOME) suggests that land contract vendors should not be included in the group of parties considered by the bill as "landlords".

Positions:

Michigan Legal Services supports the bill. (12-8-75)

The Michigan Committee on Law and Housing supports the bill. (12-5-75)

The Housing Assistance Foundation, Consumer Service Project, strongly supports the bill. (12-5-75)

The Grand Rapids Tenants Union believes the bill will solve many problems faced by its clients. (12-8-75)

The Tri-County Landlord Association does not endorse the bill, though finds it more workable than in its original form. The Association believes the bill needs amendments to make it more equitable to landlords. (12-5-75)

The Public Interest Research Group in Michigan (PIRGIM) supports the bill. (12-5-75)

The Michigan Landlords Association does not endorse the bill as reported out of committee. However, the Association finds this version more workable than the bill as originally introduced. The bill needs amendments to make it more equitable to landlords. (12-5-75)

Grand Rapids Rental Property Owners Association opposes the bill. They believe it needs further study and clarification. (12-9-75)

The Housing Owners of Michigan Exchange (HOME) opposes the bill. (12-9-75)