

HOUSE BILL REPORT

HB 3082

As Reported by House Committee On:
Trade & Economic Development
Appropriations

Title: An act relating to resolving manufactured/mobile home landlord and tenant disputes.

Brief Description: Resolving manufactured/mobile home landlord and tenant disputes.

Sponsors: Representatives Wallace, Morrell, Veloria, Chase, Upthegrove and O'Brien.

Brief History:

Committee Activity:

Trade & Economic Development: 2/3/04, 2/6/04 [DPS];
Appropriations: 2/9/04, 2/10/04 [DPS(TED)].

Brief Summary of Substitute Bill

- Creating a program to resolve landlord tenant disputes arising in mobile home parks and manufactured housing communities.

HOUSE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Veloria, Chair; Eickmeyer, Vice Chair; McDonald, Assistant Ranking Minority Member; Blake, Chase, McCoy, Ormsby, Pettigrew and Priest.

Minority Report: Do not pass. Signed by 4 members: Representatives Skinner, Ranking Minority Member; Condotta, Kristiansen and Rodne.

Staff: Tracey Taylor (786-7196).

Background:

The Manufactured Home/Mobile Home Landlord-Tenant Act (L-T Act) regulates and determines the legal rights, remedies and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home

park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant. There are several remedies available to handle violations of the L-T Act. A landlord may evict tenants for committing substantial or repeated violations of the L-T Act, including nonpayment of rent and failure to comply with local ordinances and state laws. A tenant may recover damages from a landlord for such acts as denying the tenant the right to sell his or her manufactured home within a park and charging the tenant a utility fee in excess of actual utility costs.

The Office of Mobile Home Affairs (OMHA) was created in the Department of Community, Trade and Economic Development to provide general assistance to mobile home resident organizations, park owners, and landlords and tenants. The OMHA provides ombudsman service to the mobile home park owners and tenants with problems and disputes. It also provides technical assistance to resident organizations or persons in the process of forming a resident organization and keeps all related documents. The OMHA also handles consumer complaints and related functions in order to comply with the regulations established by the federal Department of Housing and Urban Development for manufactured housing. Finally, OMHA administers the mobile home relocation assistance program.

Summary of Substitute Bill:

A process for handling an alleged violation of the L-T Act or the commission of an unfair act under the Consumer Protection Chapter is established in the Department of Licensing (DOL).

Complaints

Prior to notifying the DOL of an alleged violation, the complaining party must provide written notice by personal service, affixing a copy clearly on the residence, or by mail. The complaint must be remedied according to the times set out in the L-T Act: 24 hours where the defective condition is imminently hazardous to life; 48 hours where the landlord fails to provide electricity, water or heat; seven days in the case of repair of hazardous conditions in the common area; and 30 days in all other cases. If these conditions are met, but the violation is not remedied, the complainant may file a written notice or statement with the DOL, outlining the circumstances and facts surrounding the alleged violation. The DOL may require the notice or statement to be signed under oath.

Citations and Hearings

A citation must be delivered to the violator by certified mail or in person, and it must specify the violation, the corrective action to be taken, and the time within which the corrective action must be taken. The citation must also specify the penalties that will result if the corrective action is not taken within the specified time as well as the process for contesting a citation. A copy of the citation will also be sent to the complainant. If

no violation is found, written notice of the decision will be sent to both the complainant and the respondent.

A landlord or tenant may contest the citation through an administrative hearing within 30 days of receiving the citation. An administrative law judge may oversee an administrative hearing. If not contested within the 30 days, the order is considered final and is not subject to review by any court or agency. In a case where the violation substantially impairs or endangers the health or safety of the complainant, the DOL shall follow the emergency adjudicative proceedings procedures.

Corrective action must occur within 24 hours of receipt of the citation for violations that substantially endanger or impair the health or safety of the complainant. If the landlord is failing to provide heat, water, or electricity, the corrective action must occur within 48 hours. For all other violations, corrective action must occur within 15 days of receipt of the DOL's citation.

If, after a hearing, it is determined that the accusation is supported by a preponderance of the evidence, an order to that effect shall be entered and filed with the DOL. A copy of the order will be mailed immediately to the affected party. This order may be appealed.

Fines and Orders

If the landlord or tenant fails to take corrective action within the required time period and there was not a timely request for an administrative hearing, the DOL may impose a fine of up to \$5,000 per violation for every day that the violation remains uncorrected; however, the department must consider aggravating or mitigating circumstances in assessing any fine. Written guidelines for issuing fines must be established by the DOL. The fine may be appealed within 30 days; if not appealed within 30 days, the right to appeal the fine is lost.

The office may issue an order requiring the mobile home park or manufactured housing community owner, its assignee, or agent to cease and desist from unlawful practices and take those affirmative actions that, in the judgment of the office, carry out the purposes of this chapter, including refunds of rent increases and improper fees.

A landlord, park owner, or owner is not entitled to reimbursement of refunds, fines, penalties, and other fees from tenants.

Good Faith Attempt to Correct

If a landlord or tenant demonstrates a good faith effort to comply with the corrective action requirements of the citation, but the corrective action has not been completed due to factors beyond the landlord's or tenant's control, he or she may apply to the DOL and the DOL may grant an extension. If an order for payment is not complied with, the order may be enforced in superior court.

Other Remedies

The current remedies available under the L-T Act are not affected. This includes unlawful detainer actions.

General Powers and Provisions

The DOL is granted the power to issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding. The DOL can take or cause depositions to be taken as well as other discovery procedures as needed in an investigation, hearing, or proceeding. The DOL has the power to compel the attendance of witnesses at hearings. The department can also designate individuals authorized to sign subpoenas and citations and employ the necessary investigative, administrative, and clerical staff.

The director of the DOL, and any individuals acting on his or her behalf, are immune from suit in any action, civil or criminal, based upon any disciplinary actions or other official acts performed in the course of their duties under this chapter. Willful and intentional misconduct is excluded from this grant of immunity.

Landlords and tenants must cooperate with the department in the course of an investigation.

The OMHA will no longer provide ombudsman services.

Registration of Mobile Home Parks & Manufactured Housing Communities

All mobile home parks and manufactured housing communities must register with the DOL. The DOL must compile the most accurate list possible of all mobile home parks and manufactured housing communities in the state, the number of lots subject to the L-T Act in each park or community, and the names and addresses of these parks.

An annual fee to administer this chapter will be assessed and may not exceed \$10 per lot in the park or community subject to this chapter. No more than half of the fee may be passed on to the tenants by the park or community owner. The first fee will be collected at the time of registration.

Notification regarding the fee must go out to all known mobile home/manufactured housing community owners. If the owner fails to pay the fee, a penalty shall be assessed. Failure to pay the fee within 90 days of the registration expiration date causes a lien in favor of the state in the amount of the registration fee upon the owner's property. This lien is superior to all other liens and encumbrances except general taxes and local and special assessments. The DOL may adopt other fees by rule to cover the costs in administering this chapter.

Investigation Account

A manufactured/mobile home investigations account is created in the custody of the state treasurer. All receipts from fines and fees must be deposited in the account.

Expenditures may only be used for costs associated with this chapter. An appropriation is not required for expenditures, but the account is subject to the allotment procedures.

Substitute Bill Compared to Original Bill:

The intent section of the substitute is rewritten. The following statement is added: "Once occupancy has commenced, a homeowner may be subject to violations of Manufactured/Mobile Home Landlord-Tenant Act or unfair practices without an adequate remedy at law." This chapter is created for the purpose of protecting the public, fostering fair and honest competition, and regulating the factors unique to the relationship between the manufacture/mobile homeowner and park owner.

New definitions and terms are added in the substitute:

- "Owner" means one or more persons, jointly or severally, in who is vested all or part of the legal title to real property; or all or part of the beneficial ownership and a right to present use and enjoyment of real property.
- "Unfair practice" means any act that would constitute an unfair or deceptive practice under the Consumer Protection Act.
- "Complainant" means a landlord, park owner, tenant, or homeowner, who has a complaint alleging an unfair practice or violation of the L-T Act.
- "Respondent" means a landlord, park owner, tenant, or homeowner, alleged to have committed an unfair practice or violation of the L-T Act.

Upon receiving the original notice of the alleged violation, the time given the violator to remedy the situation in the substitute is directly tied to the time periods in the L-T Act as opposed to simply a "reasonable" amount of time. Under the substitute bill, unfair practices under the Consumer Protection Act are also a basis for a complaint.

In order to file a complaint with the Department of Licensing (DOL), the substitute requires a written notice must be provided. In addition, the DOL may choose to have that notice/statement made under oath.

Under the substitute, a copy of the citation will also be mailed to the complainant. Also, if no violation is found, written notice of the decision will be sent to the complainant and the respondent.

An administrative law judge may hear any appeal and the time to appeal the citation is extended to 30 days instead of 15 days.

The substitute changes the time to take corrective action. If a landlord fails to provide water, heat, or electricity, corrective action must occur within 48 hours. If the violation is not for water, heat, electricity or if the violation does not substantially impair or

endanger the complainant's health or safety, the corrective action must occur within 15 days.

Under the substitute bill, there is a right to appeal the amount of the fine. It must be done within 30 days or the right to the appeal is lost. In addition, a landlord, park owner, or owner is not entitled to reimbursement of refunds, fines, penalties, and other fees from the tenants.

The substitute clarifies that this new process does not preclude any unlawful detainer actions.

The substitute requires that the fees are due upon registration instead of July 1, 2005. Also, the requirement that the DOL must have properly trained employees in place to administer the chapter by January 1, 2006, is eliminated.

Finally, under the substitute, the January 1, 2006, effective date for some of the sections is changed to January 1, 2005. The remainder of the sections are still effective on August 1, 2004.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 6, 2004.

Effective Date of Substitute Bill: The bill takes effect January 1, 2005; except for sections 1, 2, and 4 through 6, which take effect August 1, 2004.

Testimony For: This bill increases the accountability of the park owners. There has been a lack of enforcement of the L-T Act in the past. It usually requires an attorney and years of legal action. Many park residents cannot afford to pay an attorney and wait for a final judgement. Most park owners are not a problem and will not be affected by this new process; but, for those few irresponsible owners, it will provide tenants a less expensive and more responsive process in order to resolve the violations. The park residents are happy to pay for a portion of the fees necessary to fund this process as it is an investment in a process that benefits all. Unlike apartment tenants, it is costly for an aggrieved manufactured or mobile home owner to move their home to a new location. Thus, there is an imbalance in the landlord-tenant relationship. Therefore, this bill levels the playing field and makes great public policy.

Testimony Against: This bill ignores the fact that there is more than enough protection in the comprehensive L-T Act. The courts can, and do, provide equal protection, and free legal services are available. Park owners are already required to have business licenses; thus, requiring additional registration is an unreasonable intrusion into the rights of the community owners. The additional bureaucracy and time required along with the

new penalties and expenses will impact the manufactured housing communities and ultimately result in increased rents. Moreover, there is no protection against unfounded or frivolous complaints. Ultimately, this bill could cause many small communities to close and will eliminate a very valuable source of affordable housing.

Persons Testifying: (In support) Marge Kelly, Mobile Home Owners Association; James Dean, Mobile Home Owners Association; Fred Jones, Mobile Home Owners Association; Kathleen Stanley, Mobile Home Owners Association; Ishbel Dickens, Columbia Legal Services; Mary Felkins, Mobile Tenant Association; Bob Giger, Mobile Home Owners Association; Ray Munson, Mobile Home Owners Association; and Nick Federici, Washington Low-Income Housing Alliance.

(Opposed) John Woodring, Manufactured Housing Communities of Washington; and Theresa Janzen, Manufactured Housing Communities of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Trade & Economic Development be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Ruderman and Schual-Berke.

Minority Report: Do not pass. Signed by 11 members: Representatives Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Anderson, Boldt, Buck, Chandler, Clements, Cox, Sump and Talcott.

Staff: David Pringle (786-7310).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Trade & Economic Development:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect January 1, 2005, except sections 1, 2 and 4 through 6, which take effect August 1, 2004.

Testimony For: This is about accountability. There is no way for poor tenants to bring

complaints forward. Tenants want to pay this fee. It makes sense to put this in the Department of Licensing (Department) as they do similar activities now. Mobile home park tenants are very willing to pay this fee. We think this is a fair model that has worked in other states. It uses a complaint model, no fishing trips for violations by the Department. There has been some sticker shock over the \$5,000 maximum fine, but this is only intended to apply to the absolute worst offenders. This lowers legal and tort costs. This bill has been needed for years, balancing the powers of owners and tenants. The bill is self-supporting, and we are happy to support this fee and bill. This does not change existing MHLTA provisions, but only provides enforcement mechanisms that will work better than what we have now.

Testimony Against: None.

Persons Testifying: Representative Wallace, prime sponsor; Fred Jones, Mobile Home Owners of America; and Nick Federici, Washington Low Income Housing Alliance.

Persons Signed In To Testify But Not Testifying: None.