

LIENS, RENTAL UNITS

House Bill 4975 (Substitute H-5) First Analysis (11-4-97)

**Sponsor: Rep. Kirk Profit
Committee: Commerce**

THE APPARENT PROBLEM:

Sometimes tenants abandon their personal property when they vacate rental properties after their legal right to occupy the premises has expired. When the personal property remaining in the leasehold has little value, landlords typically make an inventory, often including photographs, and then dispose of the personal property. However, when the remaining personal property has considerable value, landlords are uncertain how to proceed. Under the law they are not compensated if they store the property (what is sometimes called gratuitous bailment). Moreover, if they store the property, they are liable for its safekeeping. In light of these circumstances, landlords usually resort to placing their former renter's personal property outdoors, at the curb in front of the rental unit. There, the personal property can easily be stolen or damaged by thieves.

One way to address this problem is to grant landlords a limited lien claim on the personal property. This lien would be limited, excluding for example, back rent and damages to the leasehold.

THE CONTENT OF THE BILL:

House Bill 4975 would amend the Landlord-Tenant Act by creating a new section to allow a landlord to claim a lien on a tenant's personal property when a tenant vacates the premises but does not take all of his or her belongings. The lien would cover the cost of the abandoned property's removal and storage or sale. Medicine and medical equipment would not be subject to the lien and would have to be returned promptly upon request.

Under the bill, if a tenant vacated a rental unit and left personal property, a landlord could: 1) store the personal property in a manner that safeguards it, in which case the storage costs would become a lien on the personal property, and the landlord would have to notify the tenant of the storage costs within 10 days; 2) store the personal property without a lien and return it to the tenant; or, 3) dispose of the personal property, without notice to the tenant if the landlord determined the property was of no value.

After five days after the date of notice personally served or ten days from the date of mailed notice, the landlord could dispose of the personal property by private or public sale. The proceeds of the sale would be returned to the tenant after the landlord retained an amount to satisfy the lien. If the tenant did not respond to the notice, the landlord would be required to send the remaining proceeds to the Michigan State Housing Development Authority for deposit in an account for aid to homeless people. The landlord could include damages and rent due as part of the amount retained to satisfy the lien.

Under House Bill 4975, when a landlord retained titled, registered, or encumbered personal property abandoned by tenants, he or she would be able to apply for a new title, registration, and security interest. The landlord would succeed to the interest of owner, but would remain subordinate to the interest of each secured party.

MCL 554.601b

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that House Bill 4975 would add conditions to the private contract between landlord and tenant, which does not directly involve any government entity in enforcement. Thus, the bill would have no fiscal impact on state or local government. (10-29-97)

ARGUMENTS:

For:

House Bill 4975 would satisfactorily address the problem of abandoned personal property both from the landlord's and the tenant's point of view. The tenant is more apt to recover valuable property when a landlord can be assured of repayment for safely storing the property.

Against:

The provisions of this bill also permit the landlord to elect to store the personal property, and either to move it to the nearest public right-of-way or to throw it

away. Both of these options are now current practice. The bill, then, does little to alter or improve existing practice from the tenant's perspective. Instead, it provides landlords with an incentive to quickly sell their former tenant's most valuable property. A quick sale disadvantages former tenants, and also could do a significant disservice to lenders--banks, credit unions, and others--who have an interest in the personal property that is located on a tenant's premises. Those who have loaned their property to the tenant also could be done a disservice.

Response:

The procedural mechanisms for sale of personal property are designed to safeguard the rights of the tenant. Also of concern are the rights of the lender and landlord. In order to protect the ownership interest of a lending institution, this bill would make the landlord's new lien on abandoned property subordinate to the lien which other people have on the property. The provisions are similar but not identical to those found in the Garage Keepers' Lien Act (MCL 570.301) and the Self Service Storage Facility Act (MCL 570.521). (They differ from the Garage Keepers' Lien Act in that the landlord can become the "owner" of abandoned property against which he or she claims a lien, thus preserving the primary lien status of the lender. In the case of the garage keeper, in contrast, the lender has lien status secondary to the garage owners' lien.) To protect the tenant when his or her personal property is sold, the bill would require that the proceeds from any sale that exceed the cost of short-term storage must be forwarded to the former tenant. If the former tenant cannot be found, then the proceeds would be forwarded to the Michigan State Housing Authority for deposit in a housing fund to aid the homeless.

POSITIONS:

The Michigan Bankers Association strongly supports the bill. (10-30-97)

The Jackson Area Rental Property Owners Association supports the bill. (10-30-97)

The Rental Property Owners Association of Michigan supports the bill. (10-30-97)

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