

LANDLORD-TENANT ACT: CONTROL OF BEDBUGS

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House Bill 4520 (reported from committee as H-2)

Sponsor: Rep. Brandt Iden

Committee: Judiciary

Complete to 12-8-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill would add several new sections to the Landlord-Tenant Act to:

- Prohibit a landlord from leasing a rental unit known to be infested by bedbugs.
- Establish the responsibilities of landlords and tenants regarding bedbugs and a bedbug infestation, and prohibit a tenant from treating the rental unit.
- Require a tenant to inspect the rental unit after moving in and notify the landlord within two days if bedbugs are suspected.
- Make noncompliance with bedbug control protocol in a rental agreement grounds for eviction by constituting a serious and continuing health hazard.
- Place costs of treating a bedbug infestation on a tenant if the tenant or the tenant's guest caused the infestation.
- Allow a rental agreement to assign responsibility for costs associated with bedbug infestations.
- Allow a county or municipality to adopt ordinances regarding the disposal of items infested with bedbugs, but otherwise restrict ordinances expanding, revising, or conflicting with the bill's provisions.

The bill would take effect 90 days after enactment. A more detailed description follows.

Responsibilities of Landlords

The bill revises the definition of "landlord" to mean the owner, lessor, or sublessor of the rental unit or the property of which it is a part and/or a person who, directly or indirectly, acts as a rental agent or receives rent, other than a bona fide purchaser, whether or not that person has an obligation to deliver the rent payments to another.

Under the bill, a landlord is prohibited from entering into a rental agreement if the landlord knows or has reason to know the rental unit is infested. "Infested" would refer to the presence of live bedbugs or viable bedbug eggs. A landlord is required to maintain the rental premises free from bedbugs.

Within seven days after receiving written notice, or an email or text, from a tenant or other reliable source of a suspected infestation in the tenant's rental unit, the landlord must order an inspection of the unit for bedbugs; the inspection must be done by a pest management professional or accredited canine team (a handler and dog team certified by an independent organization according to commonly accepted industry standards for entomological scent

detection). If an infestation is confirmed, an inspection of the adjoining units must be ordered.

Within seven days after an infestation is confirmed, the landlord must begin control. "Control" or "controlling" means inspecting, cleaning, vacuuming, conducting thermal remediation, properly disposing of property, and arranging or scheduling treatments. If treatment is necessary, a pest management professional must be employed by the landlord for that purpose.

Responsibilities of Tenants

If a rental unit is free from bedbugs, the tenant must maintain it free from bedbugs. The tenant must inspect the unit for infestation when first occupying the unit and not move items that are infested into the rental unit. If a tenant suspects that the rental unit is infested, the landlord must be notified in writing or electronic communication (e.g., email or text message) within two days. A tenant is prohibited from treating the unit.

A tenant is required to do both of the following:

- Grant reasonable access to the rental unit to the landlord and the landlord's pest management professional for inspection, control, and treatment. "Treatment" refers to applying pesticides or other chemicals to eradicate bedbugs.
- Grant reasonable access to the rental unit to an accredited canine team for inspection and follow-up.
- Comply with the control protocol established by the landlord or the landlord's pest management professional.

A violation of the above would constitute a serious and continuing health hazard. [Constituting a serious and continuing health hazard is grounds for eviction under Michigan law (MCL 600.5714).]

Cost to Control Infestation: Responsibility

If a tenant or the tenant's guest causes an infestation, the tenant must pay the cost of control and treatment for the rental unit and other areas where bedbugs have spread. The cost will be considered additional rent owned by the tenant and could be deducted from the tenant's security deposit.

A landlord will not be liable for damages arising from an infestation or from control or treatment, except in the case of negligence, if the landlord complies with the requirements placed on landlords under the bill. In determining whether the landlord or the tenant is responsible for an infestation, a court will be required to consider the totality of the circumstances. The tenant will not be responsible for damages unless a court determines that the tenant caused the infestation.

The landlord and tenant could agree in writing how responsibility would be assigned for control, treatment, and any other costs associated with an infestation.

Local Ordinances

A county or a municipality would be prohibited from adopting or enforcing an ordinance that imposed requirements on landlords or tenants for control or treatment of bedbug infestations and that extends, revises, or conflicts with the bill's provisions.

However, an ordinance imposing requirements for the proper disposal of items infested with bedbugs could be adopted.

MCL 554.601 et al.

BRIEF DISCUSSION OF THE ISSUES:

Bed bugs are a problem in many rental communities. Though the insects are not known to spread disease, the bites may cause itching and swelling. They are also very difficult and costly to eradicate. Because the bugs are mobile, they can even spread throughout a large, multi-story apartment or condominium complex.

Supporters of the bill say it will benefit tenants by prohibiting a landlord from renting a unit that is or is suspected of being infested with bed bugs. The bill also prohibits both landlords and tenants from self-treating a unit; only a professional pest management professional could treat an infestation. Since inspection and treatment costs can run in the tens of thousands (and sometimes higher), a landlord could recover costs to eradicate an infestation from a tenant found to be responsible for bringing the bugs into the building. This should incentivize a tenant to report a suspected infestation early before it spreads and costs to contain it escalate. A court will be responsible for determining if a tenant is responsible and therefore subject to bearing the costs of inspection, control, treatment, and damages.

Opponents of the bill say it flies in the face of the known science regarding bed bugs and so unfairly puts the burden of inspection, detection, and financial liability on tenants. Arguments against the bill include the following:

- ✓ The bill goes against the trend set by other states which focus on the landlord's responsibility for early and effective treatments and for landlords to cover the costs.
- ✓ Tenants bear responsibility to inspect their units and report within two days if bed bugs are present. Pest control experts have a hard time detecting bed bugs. Bed bugs may take months to appear. They hide until hungry, and meals may be months apart (some are known to eat once a year, and recent reports say some can go up to two years between feedings). How can a tenant who lacks the training and experience of a pest control expert be expected to immediately detect a problem?
- ✓ Studies show that when the burden to pay is on the tenant, bed bug infestations go unreported and the infestations spread. Thus, the bill is likely to make the situation worse by acting as a disincentive for early reporting.

- ✓ Though a rental agreement could contain provisions regarding how responsibility would be assigned between the landlord and tenant for costs associated with bed bugs, it is not clear if the landlord could refuse to rent to a person who refuses to sign a rental agreement with such a clause. In addition, many people do not understand contracts and may not understand what they are agreeing to. A person desperate to find affordable housing, especially in a tight rental market, is at the mercy of the landlord, so to speak, and could feel forced to sign a rental agreement containing even an apparent unfair or objectionable clause regarding bed bugs.
- ✓ A person has little control over whether he or she carries in a bed bug. Educating renters can go a long way to cut down on infestations spread by picking up used furniture from a curb or how to treat objects bought from flea markets, yard sales, or second hand shops. But even a traveler staying at a high end hotel can pick up bed bugs on clothing or luggage. Someone walking down a hall can pick up a bed bug and carry it to their own or another unit. Trying to assign "fault" is often futile and costly for landlords to try to prove and for tenants to try to defend against.
- ✓ Since many renters are low income, they may not be able to take time off work to attend court appearances, or may lack transportation or child care to go to court to defend against an accusation of causing a bed bug infestation. Failure to appear could cause a court to find for the landlord and assign the costs to the tenant, even though the tenant is innocent.
- ✓ The bill is likely to result in more evictions, which will just spread the infestations to other rental units in the community.
- ✓ The bill fails to incorporate what is known to work; for instance, doing canine inspections to detect light infestations frequently and especially upon move out or before move in and at regular intervals to encompass units with long-term tenants.

FISCAL IMPACT:

House Bill 4520 could have a nominal fiscal impact on local law enforcement agencies to the extent that the bill establishes certain violations as 'a serious and continuing health hazard,' which could engender a nominal increase in eviction proceedings and, thus, increased forced removals of non-cooperative violators.

In addition, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected court-based eviction caseloads or other civil actions and related administrative costs.

The bill would result in a minimal impact to state government. The Attorney General's office, which handles complaints and enforcement of the act, could see a slight increase of cases based around bed bugs. No data currently exists that could be used to estimate the number of cases that could arise on a yearly basis. However, the potential for a slight

increase in cases would be covered by current departmental funding levels. There would also be minimal fiscal impacts to local governments, mainly through the potential of increased court cases.

POSITIONS:

Supporting

Representatives of the following entities testified, indicated, and/or submitted written testimony *in support of the bill* on 6-9-15, 12-6-15, and/or 12-8-16:

Property Management Association of Michigan
Apartment Association of Michigan
Michigan Realtors

Opposing

Representatives of the following entities testified, indicated, and/or submitted written testimony *in opposition to the bill* on 6-9-15, 12-6-15, and/or 12-8-16:

Michigan State Housing Development Authority (MSHDA)
Michigan Department of Health and Human Services (MDHHS)
Michigan Municipal League
ACLU of Michigan
Michigan Poverty Law Program
Michigan State University Housing Clinic
Michigan Association for Local Public Health
Center for Civil Justice
Michigan District Judges Association
The Michigan Township Association
Michigan Association for Justice

Legislative Analyst: Susan Stutzky
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