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HOUSE BILL NO. 732

INTRODUCED BY S. GALLOWAY, S. GIST, B. MITCHELL, L. SHELDON-GALLOWAY, L. BREWSTER, K. SEEKINS-CROWE, F. NAVE, R. MARSHALL, E. BUTTREY, J. READ, G. OBLANDER, T. BROCKMAN, T. MANZELLA, C. FRIEDEL, G. KMETZ, J. ETCHART, R. MINER, B. PHALEN, T. SMITH, E. BUTCHER, N.

HASTINGS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LANDLORD-TENANT LAWS; PROVIDING FOR REMOVAL OF AN UNAUTHORIZED PERSON OR TRESPASSER; PROVIDING A DEFINITION OF "AUTHORIZATION"; REVISING MOBILE HOME LAWS; REVISING LANDLORD DUTIES; REVISING LAWS FOR DISPOSITION OF ABANDONED PROPERTY; AMENDING SECTIONS 50-52-101, 70-33-103, 70-33-303, 70-33-430, 70-33-432, 70-33-433, AND 70-33-434, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Removal of unauthorized person or trespasser. (1) An unauthorized

person or trespasser has no legal right to occupy, enter, or trespass on a premises. A person who cannot produce authorization allowing the person to occupy a premises is an unauthorized person or trespasser for the purposes of this section and may be removed from the premises immediately by law enforcement.

(2) As used in this section, "authorization" includes:

(a) a written rental agreement entitling the person to occupy the premises; and

(b) written or verbal authorization actually given from the landlord or a tenant if the person is a guest of the tenant.

Section 2. Section 50-52-101, MCA, is amended to read:

"50-52-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the

following definitions apply:

(1) "Campground" means a parcel of land available to and principally used by the public for

1 camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

2 (2) "Department" means the department of public health and human services provided for in 2-15-
3 2201.

4 (3) "Establishment" means a campground, trailer court, work camp, or youth camp.

5 (4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous
6 lots, in the possession of, owned by, or managed by the same person.

7 (5) "Person" includes an individual, partnership, corporation, association, or other entity engaged
8 in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or
9 youth camp.

10 (6) "Political subdivision" means any county, city, town, or other legally constituted unit of local
11 government in this state.

12 (7) (a) "Trailer court" means a parcel of land ~~upon~~on which two or more spaces are available to
13 the public and designated for occupancy by trailers or mobile homes on a month-to-month or longer rental
14 agreement for use as residences.

15 (b) The term does not include a parcel composed of platted lots, each lot of which:

16 (i) is filed with the county clerk and recorder;

17 (ii) contains only one trailer space; and

18 (iii) is served by a public water supply system and public sewage system that meet the
19 requirements of rules for systems adopted pursuant to Title 75, chapter 6, part 1, and that are located within the
20 boundaries of an incorporated city or town.

21 (8) "Work camp" means a parcel of land on which housing is provided by a person for two or more
22 families or individuals living separately, for the exclusive use of the employees of the person and the families, if
23 any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces;
24 trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply
25 and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or
26 food service and dining facilities. Housing does not include shelter provided by an employer for persons who
27 are employed to perform agricultural duties on a ranch or farm.

28 (9) (a) "Youth camp" means a parcel of land on which permanent buildings, tents, or other

1 structures are maintained as living quarters for 10 or more people and that is used primarily for educational or
2 recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage
3 collection and disposal system, solid waste collection and disposal system, or food service and dining facilities.

4 (b) The term does not include any site used solely by the members and their families of a private
5 organization that owns the site."

6

7 **Section 3.** Section 70-33-103, MCA, is amended to read:

8 **"70-33-103. Definitions.** Unless the context clearly requires otherwise, in this chapter, the following
9 definitions apply:

10 (1) "Abandon" means to give up possession of the premises unless the landlord does not accept
11 abandonment or surrender as provided in 70-33-426 or unless the rental agreement has been terminated as
12 provided by law.

13 (2) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in
14 which rights are determined, including an action for possession.

15 (3) "Actual and reasonable cost" means the actual amount of expenses and labor incurred or
16 expended and the reasonable amount of expenses and labor estimated to be incurred or expended.

17 (4) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring
18 immediate action to protect the premises or the tenant. A case of emergency may include the interruption of
19 essential services, including electricity, gas, running water, and sewer and septic system service, or life-
20 threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the
21 tenant or others.

22 (5) "Court" means the appropriate district court, small claims court, justice's court, or city court.

23 (6) "Good faith" means honesty in fact in the conduct of the transaction concerned.

24 (7) "Landlord" means:

25 (a) the owner of:

26 (i) space or land, including a lot, that is rented to a tenant for a mobile home; or

27 (ii) a mobile home park;

28 (b) a person who has written authorization from the owner to act as the owner's agent or assignee

1 for purposes related to the premises or the rental agreement;

2 (c) a manager of the premises who fails to disclose the managerial position; or

3 (d) a lessor who has written authorization from the owner of the premises to sublease the
4 premises.

5 (8) "Lot" means the space or land rented and not a mobile home itself.

6 (9) (a) "Mobile home" has the same meaning as provided in 15-1-101 and includes manufactured
7 homes as defined in 15-1-101.

8 (b) The term does not include a motor home or a motor vehicle as those terms are defined in 61-1-
9 101.

10 (10) "Mobile home owner" means the owner of a mobile home entitled under a rental agreement to
11 occupy a lot.

12 (11) "Mobile home park" means a trailer court as defined in 50-52-101.

13 (12) "Organization" includes a corporation, government, governmental subdivision or agency,
14 business trust, estate, trust, partnership, association, two or more persons having a joint or common interest,
15 and any other legal or commercial entity.

16 (13) "Person" includes an individual or organization.

17 (14) "Premises" means a lot and the grounds, areas, and facilities held out for the use of tenants
18 generally or promised for the use of a tenant.

19 (15) "Rent" means all payments to be made to a landlord, including rent, late fees, or other charges
20 as agreed on in the rental agreement, except money paid as a security deposit.

21 (16) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-
22 33-311 embodying the terms and conditions concerning the use and occupancy of the premises.

23 (17) "Tenant" means:

24 (a) a person entitled under a rental agreement to occupy a lot to the exclusion of others; or

25 (b) a person who, with the written approval of the landlord and pursuant to the rental agreement,
26 has a sublease agreement with the person who is entitled to occupy the dwelling unit under the rental
27 agreement.

28 (18) "Unauthorized person or trespasser" means a person who:

1 (a) enters or remains after being asked to leave by the landlord and does not receive written
2 permission by the landlord to remain on the premises;

3 (b) is in violation of 45-6-201;

4 (c) is in violation of 45-6-203; or

5 (d) is in violation of 70-27-102."
6

7 **Section 4.** Section 70-33-303, MCA, is amended to read:

8 **"70-33-303. Landlord to maintain premises -- agreement that tenant perform duties.** (1) A
9 landlord shall:

10 ~~(a) comply with the requirements of applicable building, housing, and health department codes~~
11 ~~materially affecting health and safety at the time of original construction;~~

12 ~~(b)~~(a) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable
13 condition except when it is the tenant's responsibility to maintain the dwelling unit pursuant to 70-33-321;

14 ~~(c)~~(b) keep all common areas of the premises in a clean and safe condition;

15 ~~(d)~~(c) for the premises, maintain in good and safe working order and condition all electrical, plumbing,
16 sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied
17 or required to be supplied by the landlord;

18 ~~(e)~~(d) unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles
19 and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of
20 the lot and arrange for their removal; and

21 ~~(f)~~(e) supply running water at all times unless the lot is not required by law to be equipped for that
22 purpose or the running water is generated by an installation within the exclusive control of the tenant.

23 ~~(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b)~~
24 ~~through (1)(f), a landlord's duty must be determined by reference to subsection (1)(a).~~

25 ~~(3)~~(2) A landlord and tenant may agree in writing that the tenant is to perform the landlord's duties
26 specified in subsections ~~(1)(e)~~ (1)(d) and ~~(1)(f)~~ (1)(e) but only if the agreement is entered into in good faith and
27 not for the purpose of evading the obligations of the landlord.

28 (4)(3) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance

1 tasks, alterations, or remodeling only if:

2 (a) the agreement of the parties is entered into in good faith and not for the purpose of evading the
3 obligations of the landlord and is set forth in a separate writing signed by the parties and supported by
4 adequate consideration; and

5 ~~(b) the work is not necessary to cure noncompliance with subsection (1)(a); and~~

6 ~~(c)(b)~~ the agreement does not diminish the obligation of the landlord to other tenants."
7

8 **Section 5.** Section 70-33-430, MCA, is amended to read:

9 **"70-33-430. Disposition of abandoned personal property.** (1) (a) If a tenancy terminates by court
10 order, the personal property is considered abandoned and the landlord may immediately dispose of the
11 personal property ~~as allowed by law.~~

12 (b) If a tenancy terminates in any manner other than by court order, if the landlord reasonably
13 believes that the tenant has abandoned all personal property that the tenant has left on the premises, and if at
14 least 48 hours have elapsed since the occurrence of the events upon which the landlord has based the belief of
15 abandonment, the landlord may remove the property from the premises.

16 (2) The landlord shall inventory and store all personal property of the tenant in a place of
17 safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable
18 storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the
19 place of storage. The landlord may store the property in a commercial storage company, in which case the
20 storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

21 (3) After complying with subsections (1) and (2), the landlord shall:

22 (a) make a reasonable attempt to notify the tenant in writing that the property must be removed
23 from the place of safekeeping;

24 (b) notify the local law enforcement office of the property held by the landlord;

25 (c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

26 (d) send a notice by certified mail to the last-known address of the tenant and each known party
27 having a lien or encumbrance of record, stating that at a specified time, not less than 15 days after mailing the
28 notice, the property will be disposed of if not removed.

1 (4) The landlord may dispose of the property after complying with subsection (3) by:
 2 (a) selling all or part of the property at a public or private sale; or
 3 (b) destroying or otherwise disposing of all or part of the property if the landlord reasonably
 4 believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of
 5 the property.

6 (5) (a) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the
 7 landlord on or before the day specified in the notice that the tenant intends to remove the property and does not
 8 do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be
 9 abandoned.

10 (b) If the tenant removes the property, the landlord is entitled to storage costs for the period that
 11 the property remains in safekeeping, plus the cost of removal of the property to the place of storage.
 12 Reasonable storage costs are allowed to a landlord who stores the property, and actual storage costs are
 13 allowed to a landlord who stores the property in a commercial storage company. A landlord is entitled to
 14 payment of the storage costs allowed under this subsection ~~(5)(b)~~ before the tenant may remove the property.

15 (6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss
 16 is caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

17 ~~(7) A public or private sale authorized by this section must be conducted under the provisions of 30-~~
 18 ~~9A-640 or the sheriff's sale provisions of Title 25, chapter 13, part 7.~~

19 ~~(8)(7)~~ The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage,
 20 labor, and sale and, subject to any prior security interest of record, any delinquent rent or damages owing on
 21 the premises. The landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized
 22 accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with
 23 the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to
 24 the general fund of the county.

25 ~~(9)(8)~~ The landlord shall ensure that the terms of this section are included in plain and
 26 understandable language as a notification upon termination of the lease or rental agreement."

27

28 **Section 6.** Section 70-33-432, MCA, is amended to read:

1 **"70-33-432. Disposition of abandoned mobile home.** (1) If a tenancy terminates, if the landlord
2 reasonably believes that the tenant has abandoned a mobile home occupying a mobile home lot, and if at least
3 5 days have elapsed since the occurrence of events upon which the landlord has formed the belief that the
4 mobile home has been abandoned, the landlord may remove the mobile home from the premises or keep the
5 mobile home stored on the premises.

6 (2) If the landlord does not keep the mobile home stored on the premises, the landlord shall store
7 the mobile home in a place of safekeeping and in either case shall exercise reasonable care for the mobile
8 home. The landlord may charge the mobile home owner reasonable removal and storage charges.

9 (3) Regardless of where the landlord stores the mobile home, the landlord shall:

10 (a) notify the local law enforcement office of the storage;

11 (b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered;

12 and

13 (c) send a notice by certified mail to the last-known address of the mobile home owner and to any
14 person or entity the landlord determines has an interest referred to in subsection (3)(b), stating that at a
15 specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile
16 home owner does not respond and remove the mobile home.

17 (4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection
18 (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from where it is
19 stored and does not do so within 20 days after delivery of the owner's response, the mobile home may be
20 conclusively presumed to be abandoned. A landlord is entitled to payment of the removal and storage costs
21 allowed under subsection (2) before the owner may remove the mobile home.

22 (5) The landlord may dispose of the mobile home after complying with subsection (3) by:

23 (a) selling the mobile home at a public or private sale; or

24 (b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that
25 the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile
26 home. Disposal may include having the mobile home removed to an appropriate disposal site.

27 ~~(6) A public or private sale authorized by this section must be conducted under the provisions of 30-~~
28 ~~9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.~~

1 ~~(7)~~(6) The landlord has a lien on the mobile home and the proceeds of a sale ~~conducted pursuant to~~
 2 ~~subsection (6)~~ for the reasonable costs of removal, storage, notice, sale, or delinquent rent or damages owing
 3 on the premises. The sale proceeds are subject to any prior security interest of record. A writing or recording is
 4 not necessary to create the lien provided for in this section. In the case of a sheriff's sale, the sheriff shall
 5 conduct the sale upon receipt of an affidavit from the landlord stating facts sufficient to warrant a sale under this
 6 section. After satisfaction of the lien, the landlord shall remit to the mobile home owner the remaining proceeds,
 7 if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the
 8 general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the
 9 county."

10

11 **Section 7.** Section 70-33-433, MCA, is amended to read:

12 **"70-33-433. Grounds for termination of rental agreement.** (1) If there is a noncompliance by the
 13 tenant with the rental agreement or with a provision of 70-33-321, the landlord may deliver a written notice to
 14 the tenant pursuant to 70-33-106 specifying the acts or omissions constituting the noncompliance and stating
 15 that the rental agreement will terminate ~~upon the date specified in the notice that may not be less than the~~
 16 ~~minimum number of days after receipt of the notice provided for in this section.~~ The rental agreement
 17 terminates as provided in the notice for one or more of the following reasons and subject to the following
 18 conditions:

19 (a) nonpayment of rent, late charges, or common area maintenance fees as established in the
 20 rental agreement, for which the notice period is ~~7~~3 days;

21 (b) a violation of a rule other than provided for in subsection (1)(a) that does not create an
 22 immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice
 23 period is 14 days;

24 (c) a violation of a rule that creates an immediate threat to the health and safety of any other
 25 tenant or the landlord or manager, for which the notice period ~~to terminate~~ is 24 hours;

26 (d) late payment of rent, late charges, or common area maintenance fees, as established in the
 27 rental agreement, ~~three~~two or more times within a ~~42-month~~6-month period if written notice is given by the
 28 landlord after each failure to pay, as required by subsection (1)(a), ~~for which the notice period for termination for~~

1 the final late payment is 30 days;

2 ~~(e)~~ a violation of a rule that creates an immediate threat to the health and safety of any other tenant or
3 the landlord or manager whether or not notice was given pursuant to subsection (1)(c) and the violation was
4 remedied as provided in subsection (3), for which the notice period is 14 days;

5 ~~(f)~~(e) two or more violations within a 6-month period of the same rule for which notice has been given
6 for each prior violation, as provided in subsection (1)(a); or (1)(b), ~~or (1)(c)~~, for which the notice period for the
7 final violation is ~~30~~ 3 days;

8 ~~(g)~~(f) two or more violations of 70-33-321(1)(a) through (1)(e) within a 6-month period, for which the
9 notice period for the final violation is ~~44~~ 3 days;

10 ~~(h)~~ any violation of 70-33-321(3), for which the notice period is as provided in 70-33-422(1);

11 ~~(i)~~(g) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment
12 and use of the premises, for which the notice period is ~~7~~ 3 days;

13 ~~(j)~~(h) any other noncompliance or violation not covered by subsections (1)(a) through ~~(1)(i)~~ (1)(g) that
14 endangers other tenants or mobile home park personnel or the landlord or manager or causes substantial
15 damage to the premises, for which the notice period is ~~44~~ 3 days;

16 ~~(k)~~ conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a
17 federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other
18 tenants or the landlord or manager or the landlord's documentation of a violation of the provisions of Title 45,
19 chapter 9, for which the notice period is 14 days;

20 ~~(l)~~(i) changes in the use of the land if the requirements of subsection (2) are met, for which the
21 notice period is 180 days;

22 ~~(m)~~(j) any legitimate business reason not covered elsewhere in this subsection (1) if the landlord
23 meets the following requirements:

24 (i) the termination does not violate a provision of this section or any other state statute; and

25 (ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum
26 of 90 days' written notice of the termination.

27 (2) If a landlord plans to change the use of all or part of the premises from mobile home lot rentals
28 to some other use, each affected mobile home owner must receive notice from the landlord as follows:

1 (a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least
2 15 days' written notice that the landlord will be appearing before a unit of local government to request permits
3 for a change of use of the premises.

4 (b) After all required permits requesting a change of use have been approved by the unit of local
5 government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months'
6 written notice of termination of tenancy. If the change of use does not require local government permits, the
7 landlord shall give the written notice at least 6 months prior to the change of use. In the notice the landlord shall
8 disclose and describe in detail the nature of the change of use.

9 (c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection
10 (2)(b), the landlord shall give each prospective mobile home owner and any tenant of the mobile home owner
11 whose identity and address have been provided to the landlord written notice that the landlord is requesting a
12 change in use before a unit of local government or that a change in use has been approved.

13 (3) Subject to the right to terminate in subsections (1)(d) through ~~(4)(k)~~ (1)(h), if the noncompliance
14 described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise
15 and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental
16 agreement does not terminate as a result of that noncompliance.

17 (4) For purposes of calculating the total number of notices given within a ~~12-month~~ 6-month period
18 under subsection (1)(d), only one notice for each violation per month may be included in the calculation."
19

20 **Section 8.** Section 70-33-434, MCA, is amended to read:

21 "**70-33-434. Attorney fees -- costs.** (1) In an action on a rental agreement or arising under this
22 chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the
23 prevailing party notwithstanding an agreement to the contrary.

24 (2) If the rental agreement is terminated pursuant to 70-33-433(1)(c), (1)(g), or (1)(h), the tenant
25 shall immediately vacate the premises and the mobile home must be removed from the premises within 30
26 days of termination of the rental agreement."

27
28 NEW SECTION. **Section 9. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 70, chapter 33, part 1, and the provisions of Title 70, chapter 33, part 1, apply to [section 1].

2

3 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

4

- END -