

## Comments of the Michigan Poverty Law Program about HB 4587

Neither legal principles nor public policy rationale support HB 4587.

HB 4587 would require a district court judge to add to a possession judgment in an eviction case "any [monthly] fee for late payment of rent specified in the lease", in the amount of the greater of \$50 or 10% of the monthly rent (and a higher amount if a landlord shows it's "reasonable"). It would also allow landlords to get these amounts in a money damages claim.

### HB 4587 lacks a sound legal basis for late fees

A contract provision that stipulates the damages for its breach is known as a liquidated damages clause. A charge for the late payment of rent – a late fee - is a liquidated damage. A liquidated damage is either valid and enforceable, or invalid as a penalty. For a liquidated damage to be valid and enforceable, there must be a reasonable relationship between the stipulated amount and the possible injury or cost suffered because of the breach.<sup>1</sup>

The injury or cost that a landlord suffers because of a late payment of rent is minimal. Those costs are the loss of use of the unpaid rent, which at current interest rates would be very low, and the preparation and mailing of a nonpayment of rent notice, which is a simple clerical task requiring only a few minutes. It's hard to imagine costs beyond these, or that these costs would be higher than \$10/month.<sup>2</sup> The fee to costs relationship would be hugely unreasonable under HB 4587.

A \$50 monthly late fee far exceeds the cost a landlord incurs due to a late rent payment.<sup>3</sup> The HUD determined "Fair Market Rent" (FMR) for a 2 bedroom rental unit in Michigan ranges from \$713 to \$1124<sup>4</sup>. FMR is a less than average rent, because it is set at the 40<sup>th</sup> percentile of rents in an area. See 24 CFR 888.113. Still, a 10% late fee on rents at the 2 bedroom FMR would impose on Michigan renters staggering and penal late fees ranging from \$71 to \$112/month.

Such charges would go far beyond just compensating landlords for the actual cost that late payment of rent imposes on them (which, again, is the purpose of a legitimate late fee); they would punish tenants improperly, and be a undeserved windfall and lucrative revenue generator for landlords.

### HB 4587 lacks a sound public policy basis

Besides the negative policy implications of enacting HB 4587 outlined above, there are others. This issue cannot properly be viewed outside the context of the affordable housing crisis that afflicts Michigan's low income (and many moderate income) families (which by way of state spending, Michigan does nothing to alleviate.) 29% of Michigan renter families are extremely low income (30% and below area median income). 70% of those families are "severely cost burdened" -they pay 50% or more of their income towards their housing costs (housing affordability is defined as housing costs that consume 30% or less of a family's income)<sup>5</sup> It's no wonder many of these families struggle to meet their rent obligations. HB 4587 would only worsen their predicament. The affordable housing crisis is a significant, if not the primary driver of Michigan's eviction crisis. Michigan should be looking at ways to reduce evictions, not increase them, which this bill would.

---

<sup>1</sup> See<sup>1</sup> *Curran v. Williams*, 352 Mich 278, 282 (1958).

<sup>2</sup> For a tenancy with rent of \$1,000, the monthly loss of use of money at a very generous 5% interest rate would be \$4.17. Generously estimating the cost of a nonpayment of rent from notice and postage at \$1, and the time of filling it out (10 minutes) at an hourly rate of \$20 (\$4.33), yields a notice prep cost of \$5.33, for a total of \$9.50.

<sup>3</sup> By contrast, the maximum late fee for a HUD subsidized multifamily tenancy is \$31. See HUD Handbook 4350.3, Ch. 6-23 C. ([https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/hsg/4350.3](https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3)).

<sup>4</sup> ([https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2020\\_code/2020state\\_summary.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2020_code/2020state_summary.odn)).

<sup>5</sup> See NLIHC report, <https://nlihc.org/housing-needs-by-state/michigan>, based on Census Bureau data (ACS PUMS)