

HOUSE BILL 748

Introduced by Kadas, et al.

2/11	Introduced
2/11	Referred to Business & Economic Development
2/11	First Reading
2/20	Hearing
2/20	Tabled in Committee

1 *HOUSE* BILL NO. *748*
 2 INTRODUCED BY *Kadon Daniel*
 3 *Timothy Spitzer Dolezal Larson*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A MOBILE HOME
 5 PARK OPERATOR-RESIDENT ACT; GENERALLY REGULATING THE
 6 RELATIONSHIP BETWEEN MOBILE HOME PARK OPERATORS AND
 7 RESIDENTS; REQUIRING THAT UNLESS OTHERWISE AGREED UPON,
 8 MOBILE HOME RENTAL AGREEMENTS MUST BE FOR AT LEAST 1 YEAR;
 9 RESTRICTING IMPOSITION OF FEES BY MOBILE HOME PARK
 10 OPERATORS; ESTABLISHING PERMISSIBLE GROUNDS FOR EVICTION OF
 11 A MOBILE HOME RESIDENT; ESTABLISHING MINIMUM REQUIREMENTS
 12 FOR MOBILE HOME PARK RENTAL AGREEMENTS; AND AMENDING SECTION
 13 70-24-103, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. **Section 1.** Short title. [Sections 1
17 through 17] may be cited as the "Mobile Home Park
18 Operator-Resident Act".

19 NEW SECTION. **Section 2.** Definitions. As used in
20 [sections 1 through 17], the following definitions apply:

21 (1) (a) "Mobile home" means a residential structure
22 that is transportable in one or more sections and that has a
23 body 8 feet or more in width and 32 feet or more in length,
24 is built on an integral chassis, and is designed to be used
25 as a dwelling when connected to the required utilities. The

1 term includes the plumbing, heating, air-conditioning, and
2 electrical systems contained in the home.

3 (b) A mobile home does not include travel trailers,
4 camping trailers, truck campers, or motor homes that are
5 primarily designed as temporary living quarters for
6 recreational camping or travel use and that either have
7 their own motor power or are mounted on or drawn by another
8 vehicle.

9 (2) "Mobile home park" or "park" means a use of land in
10 which two or more lots or spaces are offered for rent or
11 lease for the placement of mobile homes and in which the
12 primary use of the park or of any mobile home section of the
13 park is residential.

14 (3) "Park operator" means an owner or operator of a
15 mobile home park, including park employees and any
16 subsequent purchaser of a park.

17 (4) "Rental agreement" means any agreement between a
18 park operator and a resident that establishes the terms and
19 conditions under which a mobile home is placed upon a rented
20 or leased lot in a mobile home park. A lease is a rental
21 agreement.

22 (5) "Resident" is a person who has a tenancy in a
23 mobile home park under a rental agreement.

24 NEW SECTION. **Section 3.** Restrictions on certain
25 practices. A park operator may not:

1 (1) engage in unfair or deceptive acts or practices or
2 unfair methods of competition;

3 (2) require, as a condition to the rental of any site,
4 the purchase of a mobile home from the park operator or any
5 dealer, manufacturer, or agent named by the operator;

6 (3) represent to any person that the purchase of a
7 mobile home from the park operator or any dealer,
8 manufacturer, or agent named by the operator will give the
9 purchaser an advantage over others in the rental or
10 continued occupancy of a site;

11 (4) discriminate or threaten to discriminate with
12 regard to the amount of rental charges or in any other
13 manner against a resident for failure of the resident to
14 purchase a mobile home from the operator or any dealer,
15 manufacturer, or agent named by the operator;

16 (5) solicit or receive any payment or other thing of
17 value from any person upon the representation or
18 understanding that the consideration will give that person
19 an advantage over others in the rental or continued
20 occupancy of a site; or

21 (6) use a mobile home park site to display an
22 unoccupied mobile home offered for sale or rent a site to a
23 mobile home dealer for purposes other than accommodation of
24 a mobile home occupied as a residence if the use or rental
25 of the site results in there being no site in the mobile

1 home park available to a prospective resident who does not
2 purchase a mobile home from the operator or renting dealer.

3 NEW SECTION. **Section 4. Term of rental agreement --**
4 **early termination penalties.** (1) All rental agreements must
5 be for a term of 1 year unless a longer or shorter period is
6 mutually agreed upon by both the resident and park operator.

7 (2) A person who executes a rental agreement offered
8 pursuant to this section may cancel the agreement by
9 notifying the park operator in writing within 7 days of
10 execution of the rental agreement.

11 (3) The maximum amount that a park operator may recover
12 as damages for a resident's early termination of a rental
13 agreement is 2 months' rent, except that if the mobile home
14 space is reoccupied within 20 days of vacating, the damages
15 may not exceed 1 month's rent.

16 NEW SECTION. **Section 5. Security deposit -- terms.** (1)
17 Before signing a resident's first rental agreement, the park
18 operator may require a security deposit not exceeding 1
19 month's rent.

20 (2) The security deposit, with interest of 5% a year,
21 must be returned to the resident when the lease is
22 terminated if the resident:

23 (a) has paid in full all rent and other charges due;

24 (b) has caused only minimal damage to the leased
25 premises; and

1 (c) has left the lot reasonably clean and free of
2 debris.

3 (3) Within 15 days of the termination of the rental
4 agreement, the park operator shall provide the resident with
5 a written, itemized list of the charges due, the damages to
6 the premises, and the estimated cost of repair for damages.
7 If the security deposit exceeds charges due and the
8 estimated cost of repair for damages to the premises, the
9 park operator shall tender payment for the amount to the
10 resident.

11 (4) Failure to provide the list referred to in
12 subsection (3) constitutes an admission by the park operator
13 that no damages are due, and the operator shall immediately
14 remit to the resident the full amount of the security
15 deposit, plus any interest.

16 NEW SECTION. Section 6. Other fees and charges --
17 choice of vendors -- restrictions. (1) The park operator may
18 not charge residents any fees or charges other than the
19 monthly rent charge, except for use-based charges that are
20 set out in the rental agreement.

21 (2) For purposes of this section, "use-based charges"
22 means charges for services or facilities that are based on
23 the amount of the resident's use of a particular service or
24 facility. A charge is not use-based if there is a charge
25 whether or not the resident uses the service or facility or

1 if different residents are assessed the same charge even if
2 their use is different.

3 (3) Charges for existing use-based services or
4 facilities must be set out in the rental agreement and may
5 be increased only as set out in the rental agreement. Any
6 increase must be reasonably related to the increases in the
7 park operator's own costs.

8 (4) The following fees are specifically prohibited, and
9 any rental agreement provision providing for the fees is
10 void:

- 11 (a) entrance and exit fees;
- 12 (b) fees for resident's resale of the mobile home,
13 assignment of lease, or subleasing of the mobile home;
- 14 (c) fees for additional family members;
- 15 (d) short-term guest fees; or
- 16 (e) pet fees unless special facilities are provided for
17 pets.

18 NEW SECTION. Section 7. Penalty for late payment.
19 After the payments are 15 days delinquent, the park operator
20 may charge a penalty for late payment of rent or other fees.
21 This late charge may not exceed 5% of the amount owed and
22 may be imposed only once for a particular late payment.

23 NEW SECTION. Section 8. Utility charges -- notice. (1)
24 A park operator's utility service charge, if one is imposed:
25 (a) may not exceed prevailing residential utility rates

1 in the vicinity;

2 (b) must be use-based as provided in [section 6(2)];
3 and

4 (c) must be periodically invoiced in writing,
5 specifying the charge, the rate, and the amount of the
6 utility service utilized.

7 (2) The park operator shall post in a conspicuous place
8 the prevailing residential utilities rate schedule as
9 published by the serving utility.

10 NEW SECTION. Section 9. No restrictions on choice of
11 vendors -- exceptions. A park operator may not restrict the
12 choice of vendors from whom a resident may purchase goods or
13 services or in any other way engage in conduct that
14 discourages residents from selecting the vendor of their
15 choice. This section does not apply to:

16 (1) snow removal, lawn care, or similar site
17 maintenance services performed by the park operator upon the
18 failure of a resident to fulfill the resident's site
19 obligations under the rental agreement. Charges may not be
20 imposed for site maintenance services performed by the
21 operator under this subsection (1) unless the resident, if
22 available, is given prior notice and a reasonable
23 opportunity to perform the resident's obligation under the
24 rental agreement. Charges for site maintenance services must
25 be set forth in the rental agreement and must be reasonable

1 and limited to the park operator's actual costs.

2 (2) a nondiscriminatory prohibition against sales
3 solicitations within the manufactured home park.

4 NEW SECTION. Section 10. Park rules. (1) The park
5 operator may promulgate rules governing the rental or
6 occupancy of a mobile home lot and the use of common areas
7 and facilities, but a rule may not be unreasonable, unfair,
8 or unconscionable.

9 (2) A rule that does not apply uniformly to all mobile
10 home residents of a similar class creates a rebuttable
11 presumption that the rule or change in rule is unfair.

12 (3) Each common area facility is open or available to
13 residents at all reasonable hours, and the hours of the
14 common area facility must be posted at the facility.

15 (4) Except in an emergency, a change in a rule is not
16 effective for 60 days after the residents receive notice of
17 the change.

18 NEW SECTION. Section 11. Lease disclosures -- terms.

19 (1) All rental agreements and renewal agreements must be in
20 writing and be signed by the park operator and the resident.
21 The park operator shall give the resident a copy of the
22 park's standard rental agreement, with any park rules
23 attached, at the time the prospective resident initially
24 contacts the park operator concerning a prospective vacancy.
25 The park operator shall give the resident a copy of the

1 completed agreement after the rental agreement has been
2 signed.

3 (2) A rental agreement or renewal agreement must
4 contain but is not limited to the following provisions:

5 (a) the rental term, which must be at least 1 year
6 unless otherwise agreed upon as provided in [section 4];

7 (b) the monthly rental amount and the method for
8 specifically determining the amount of any changes in rent
9 over the lease term. If the rent amount changes over the
10 term of the lease and the lease does not specify the dollar
11 amount of the subsequent rent levels, the rental agreement
12 must clearly set forth the formula or method for determining
13 those changes. The rental agreement must also give clear and
14 realistic examples of how the formula or method would work
15 in each year of the lease term.

16 (c) the rules of the park, if any;

17 (d) a warranty of habitability, as specified in
18 [section 12];

19 (e) a description of the park operator's maintenance
20 responsibilities;

21 (f) a list of any facilities and services that the park
22 operator will provide;

23 (g) the amount of any late charges, fees, or charges
24 for services that may be imposed, including any increases
25 during the term of the lease. If the amount of fees or

1 charges change over the term of the lease and the lease does
2 not specify the dollar amount of the subsequent levels of
3 fees or charges, the rental agreement must clearly set forth
4 the formula or method for determining those changes. The
5 rental agreement must also give clear and realistic examples
6 of how the formula or method would work in each year of the
7 lease term.

8 (h) disclosure of any reservation by the park operator
9 of the right to evict a resident for a change in the use of
10 the property during the lease term;

11 (i) if there is a temporary zoning permit for the use
12 of the land, the date when the zoning permit expires;

13 (j) a description of the resident's manufactured home
14 site, its address or site number, and the number and
15 location of any accompanying automobile parking spaces;

16 (k) the park operator's name and address for the
17 delivery of all official notices and the name and telephone
18 number of the individual who may be contacted for emergency
19 maintenance, pursuant to [section 12];

20 (l) the amount of any security deposit imposed by the
21 park operator;

22 (m) any penalties the park operator may impose for the
23 resident's early termination of the rental agreement;

24 (n) the grounds for eviction;

25 (o) any other terms or conditions of occupancy;

1 (p) a prominent disclosure that the resident's rights
2 and obligations and park operator's rights and obligations
3 are set out in a pamphlet attached to the rental agreement;
4 and

5 (q) a prominent disclosure that the person executing
6 the rental agreement may cancel it with no obligation for
7 the next 7 days after signing the agreement.

8 (3) A provision for rent increases or increases in fees
9 over the term of the lease must be initialed by the
10 resident.

11 (4) The rental agreement must be:

12 (a) clearly written in understandable language;

13 (b) in at least 10-point type, typewritten, or in
14 legible handwriting; and

15 (c) in a form approved by the attorney general.

16 **NEW SECTION. Section 12. Warranty of habitability --**
17 **park operator obligations -- resident self-help.** (1) In a
18 rental agreement, the park operator is considered to
19 covenant and warrant that the space and its associated
20 facilities are fit for human habitation.

21 (2) The park operator shall:

22 (a) comply with state and local government requirements
23 applicable to the mobile home park;

24 (b) maintain all common areas of the park in a clean
25 and safe condition;

1 (c) maintain in good working order all electrical,
2 plumbing, and sanitary facilities, and all appliances and
3 recreational facilities he furnishes;

4 (d) maintain and protect all water and sewer lines and
5 all utilities provided to the mobile home. Maintenance
6 responsibility extends to that point where the normal mobile
7 home utility "hook-ups" connect to those provided by the
8 park operator or utility company.

9 (e) maintain in a safe and secure location individual
10 mailboxes for the residents;

11 (f) (i) maintain roads within the mobile home park in
12 good and safe condition, including provision of snow
13 removal, dust control, and adequate drainage; and

14 (ii) be responsible for damage to a vehicle that is the
15 direct result of a unrepaired or poorly maintained access
16 road within the park;

17 (g) take reasonable steps to exterminate rodents,
18 vermin, or other pests dangerous to the health and safety of
19 the resident whenever an infestation exists on the common
20 premises or whenever an infestation occurs in the interior
21 of a manufactured home as a result of infestation existing
22 on the common premises;

23 (h) maintain the premises and regrade them when
24 necessary to prevent the accumulation of stagnant water and
25 to prevent the detrimental effects of moving water;

1 (i) take all necessary steps to maintain the integrity
2 of the foundation of the resident's mobile home;

3 (j) keep the common areas of the park free from any
4 species of weed or plant growth that is noxious or
5 detrimental to the health of the residents; and

6 (k) provide for the removal of garbage, rubbish, and
7 other waste incidental to the occupancy of the mobile home
8 space.

9 (3) The park operator shall authorize a manager,
10 assistant manager, or other employee to make repairs that
11 are the responsibility of the park operator or enter into a
12 contract with a third party for the repairs. The park
13 operator shall:

14 (a) contract with a third party to provide emergency
15 repairs that are the responsibility of the park operator on
16 the occasions when the manager, assistant manager, or other
17 designated employee is not physically present in the park;
18 and

19 (b) notify each resident of the telephone number at
20 which the third party may be reached directly.

21 (4) If the park operator fails to comply with the
22 provisions of subsections (1), (2), or (3), the resident may
23 recover damages for a breach of subsection (1), (2), or (3)
24 and also may notify the park operator of the resident's
25 intention to correct the condition at the park operator's

1 expense. If, after being notified by the resident in
2 writing, the park operator fails to comply within 15 days,
3 or more promptly if conditions reasonably require in case of
4 emergency, the resident may cause the work to be done by a
5 contractor and, after submitting to the park operator an
6 itemized statement, deduct from the resident's rent the
7 actual and reasonable cost of the work.

8 NEW SECTION. **Section 13. Right of entry.** Except in the
9 case of an emergency or when the resident has abandoned the
10 mobile home, the park operator has no right of entry to a
11 mobile home without the prior written consent of the
12 resident. This consent may be revoked in writing by the
13 resident at any time. The park operator has a right of entry
14 upon the land where a mobile home is situated for
15 maintenance of utilities, for maintenance of the premises,
16 and for protection of the mobile home park, at any
17 reasonable time, but not in a manner or at a time that would
18 interfere with the resident's use of the property.

19 NEW SECTION. **Section 14. Grounds for termination of**
20 **rental agreement or eviction.** (1) The park operator may
21 terminate the rental agreement or evict the resident only by
22 following the procedures set out in [section 15] and only
23 for one or more of the following reasons:

- 24 (a) nonpayment of rent as provided in subsection (2);
- 25 (b) violation of a park rule as provided in subsection

1 (3); or

2 (c) subject to subsection (4), disorderly conduct that
3 results in disruption of the rights of others to the
4 peaceful enjoyment and use of the premises, endangers other
5 residents or park personnel, or causes substantial damage to
6 the park premises, or the resident's conviction of a crime,
7 commission of which threatens the health, safety, or welfare
8 of the other residents or the park operator.

9 (2) A park operator may not institute eviction
10 procedures as set out in [section 15] for nonpayment of rent
11 until 45 days have elapsed from the date the resident
12 receives notice that rent is delinquent and only if the
13 resident has not tendered that delinquent payment during
14 that 45-day period. Any payment by a resident to a park
15 operator must be attributed first to delinquent rent
16 payments, then to current rent payments, and last to fees,
17 charges, or late fees.

18 (3) Violation of a park rule or regulation is grounds
19 for eviction only if:

20 (a) the resident received written notice of the rule
21 before the violation took place;

22 (b) the rule violation is likely to continue or recur;
23 and

24 (c) the continuing violation or recurrence would have a
25 significant adverse impact on the park or its residents.

1 (4) The conduct set out in subsection (1)(c) is grounds
2 for eviction only if there is a likelihood of future conduct
3 that would also be grounds for termination of the rental
4 agreement or eviction pursuant to that subsection. There is
5 no such likelihood if the conduct or conviction was
6 committed by a member of the resident's household, and not
7 by the resident, and that other person is no longer living
8 in the mobile home and is not likely to return to the mobile
9 home.

10 NEW SECTION. **Section 15. Eviction.** (1) The park
11 operator may terminate the rental agreement or evict the
12 resident only by court process. The court shall determine if
13 the grounds for eviction as set out in [section 14] have
14 been met. An eviction may not be ordered if the court
15 determines that the eviction proceeding is in retaliation
16 for the resident's conduct.

17 (2) In any eviction action for nonpayment of rent, the
18 resident is entitled to raise, by defense or counterclaim,
19 any claim against the park operator relating to or arising
20 out of the tenancy for breach of warranty, for breach of the
21 rental agreement, or violation of any law. The amounts that
22 the resident may claim under this section include but are
23 not limited to the difference between the agreed-upon rent
24 and the fair value of the use and occupation of the mobile
25 home lot, any amounts reasonably spent by the resident to

1 repair defects in the mobile home park, and any other
2 damages.

3 (3) (a) The court, after hearing the case, may require
4 the resident claiming under this section to deposit with the
5 clerk of the court:

6 (i) the fair value of the use and occupation of the
7 premises less the amount awarded the resident for any claim
8 under this section; or

9 (ii) any installments of this amount from time to time
10 as the court may direct, for the occupation of the premises.

11 (b) After the hearing, the court may direct a person
12 or, if appropriate, a receiver to expend the funds for the
13 repair of the premises.

14 (c) When all of the conditions found by the court have
15 been corrected, the court shall direct that the balance of
16 funds, if any, remaining with the clerk of the court to be
17 paid to the park operator.

18 (d) There may not be recovery of possession under this
19 section if the amount found by the court to be due the park
20 operator equals or is less than the amount found to be due
21 the resident.

22 (4) A court order for eviction based on the resident's
23 nonpayment of rent must specify that the sheriff may not
24 serve an eviction notice for 30 days from the date of the
25 court order and that, until the time the resident is

1 actually evicted by the sheriff or constable, the resident
2 may cure the eviction order by paying the full amount due. A
3 court order for eviction for reasons other than nonpayment
4 of rent may specify conditions under which the resident may
5 cure the violation and remain in the tenancy.

6 (5) A resident who has been evicted from the park has
7 120 days in which to sell the resident's mobile home in the
8 park. The resident is responsible for paying the rental
9 amount during that period and for regular maintenance of the
10 mobile home lot during the 120-day period. The park has a
11 lien on the mobile home to the extent that the payments are
12 not made or the maintenance not performed. During the
13 120-day period, no one may reside in the mobile home.

14 **NEW SECTION. Section 16. Sale of home -- assignment of**
15 **lease -- subleases.** (1) A park operator may not deny any
16 resident the right to sell or interfere with the sale of a
17 manufactured home on a rented space or require the resident
18 to remove the home from the space solely on the basis of a
19 sale of the mobile home.

20 (2) (a) A park operator may not place unreasonable,
21 unfair, or discriminatory restrictions:

22 (i) on a resident who displays a "for sale" sign; or

23 (ii) on access to the park by prospective purchasers or
24 realtors.

25 (b) A park operator may not interfere with a resident's

1 efforts to sell a mobile home.

2 NEW SECTION. Section 17. Sale or lease of park --
3 notification. A park operator shall notify the residents,
4 within 7 days, of:

- 5 (1) any bona fide offer to buy or lease the park that
- 6 the owner intends to accept;
- 7 (2) any listing of the park with a realtor; or
- 8 (3) any advertisement or other public notice that the
- 9 park is for sale or the land upon which the park is located
- 10 is for lease.

11 **Section 18.** Section 70-24-103, MCA, is amended to read:
12 **"70-24-103. General definitions.** Subject to additional
13 definitions contained in subsequent sections and unless the
14 context otherwise requires, in this chapter the following
15 definitions apply:

- 16 (1) "Action" includes recoupment, counterclaim, setoff
- 17 suit in equity, and any other proceeding in which rights are
- 18 determined, including an action for possession.
- 19 (2) "Court" means the appropriate district court or the
- 20 appropriate justice's court.
- 21 (3) "Dwelling unit" means a structure or the part of a
- 22 structure that is used as a home, residence, or sleeping
- 23 place by a person who maintains a household or by two or
- 24 more persons who maintain a common household. "Dwelling
- 25 unit";--in--the--case--of--a--person--who--rents does not include

1 space rented in a mobile home park but does include not-rent
2 the a rented mobile home;--means--the--space--rented--and--not--the
3 mobile-home-itself.

4 (4) "Good faith" means honesty in fact in the conduct
5 of the transaction concerned.

6 (5) "Landlord" means the owner, lessor, or sublessor of
7 the dwelling unit or the building of which it is a part and
8 also means a manager of the premises who fails to disclose
9 his managerial position.

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

15 (7) "Owner" means one or more persons, jointly or
16 severally, in whom is vested all or part of:

- 17 (a) the legal title to property; or
- 18 (b) the beneficial ownership and a right to present use
- 19 and enjoyment of the premises, including a mortgagee in
- 20 possession.

21 (8) "Person" includes an individual or organization.

22 (9) "Premises" means a dwelling unit and the structure
23 of which it is a part, the facilities and appurtenances
24 therein, and the grounds, areas, and facilities held out for
25 the use of tenants generally or promised for the use of a

1 tenant.

2 (10) "Rent" means all payments to be made to the
3 landlord under the rental agreement.

4 (11) "Rental agreement" means all agreements, written or
5 oral, and valid rules adopted under 70-24-311 embodying the
6 terms and conditions concerning the use and occupancy of a
7 dwelling unit and premises.

8 (12) "Roomer" means a person occupying a dwelling unit
9 that does not include a toilet, a bathtub or a shower, a
10 refrigerator, a stove, or a kitchen sink, all of which are
11 provided by the landlord and one or more of these facilities
12 are used in common by occupants in the structure.

13 (13) "Single family residence" means a structure
14 maintained and used as a single dwelling unit.
15 Notwithstanding that a dwelling unit shares one or more
16 walls with another dwelling unit, it is a single family
17 residence if it has direct access to a street or
18 thoroughfare and shares neither heating facilities, hot
19 water equipment, nor any other essential facility or service
20 with another dwelling unit.

21 (14) "Tenant" means a person entitled under a rental
22 agreement to occupy a dwelling unit to the exclusion of
23 others."

-End-