

1 HB BILL NO. 92
 2 INTRODUCED BY Robbins Milligan

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LANDLORDS
 5 AND TENANTS AND PROVIDING A SUMMARY PROCEDURE UNDER WHICH A
 6 LANDLORD MAY TERMINATE A RENTAL AGREEMENT AND EVICT A
 7 TENANT."
 8

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

10 Section 1. Purpose. The purpose of this act is to
 11 provide a summary eviction procedure that is consonant with
 12 the requirements of due process of law and under which a
 13 landlord may terminate a rental agreement and evict a tenant
 14 because of nonpayment of rent or noncompliance with the
 15 terms of the rental agreement in the shortest period of time
 16 possible.

17 Section 2. Preeviction show cause order. If a tenant
 18 fails to pay rent when due or fails to comply with the terms
 19 of the rental agreement, the landlord may apply to a justice
 20 of the peace in the county where the leasehold premises are
 21 located for an order commanding the tenant to appear before
 22 the justice at his office on a date and time specified in
 23 the order and show cause why the rental agreement should not
 24 be terminated and he not be immediately evicted.

25 Section 3. Hearing date. The order commanding the

1 tenant to appear before the justice and show cause shall
 2 specify a date for the hearing no earlier than 7 days or
 3 later than 15 days from the date the landlord makes
 4 application for the order.

5 Section 4. Order to be personally served. Except as
 6 provided by [section 5], the show cause order shall be
 7 personally served on the tenant and proof of personal
 8 service shall be made prior to the hearing in the manner
 9 provided for proof of personal service in Rule 4(D) of the
 10 Montana Rules of Civil Procedure.

11 Section 5. Service by posting. (1) A landlord may
 12 have a duplicate copy of the show cause order signed by the
 13 justice for the purpose of serving the order by
 14 conspicuously posting it at the main entrance to the
 15 leasehold premises.

16 (2) Service by conspicuously posting a duplicate copy
 17 of the show cause order at the main entrance to the
 18 leasehold premises is sufficient notice for an order
 19 terminating the rental agreement and ordering immediate
 20 eviction whenever:

21 (a) a good faith and diligent effort has been made to
 22 personally serve the order on the tenant;

23 (b) the duplicate copy was posted and remained posted
 24 for at least 5 days prior to the date set for the show cause
 25 hearing; and

1 (c) the landlord swears by written affidavit or under
2 oath that the conditions specified in subsections (2) (a) and
3 (2) (b) of this section have been complied with.

4 Section 6. Failure of landlord to appear at hearing.
5 If the landlord fails to appear at the show cause hearing,
6 termination of the rental agreement and immediate eviction
7 shall be denied and the justice shall order all court costs
8 and reasonable attorney fees incurred by the tenant to be
9 paid by the landlord.

10 Section 7. Failure of tenant to appear at hearing.
11 If the landlord appears at the show cause hearing and the
12 tenant fails to appear after having been served in the
13 manner provided in [section 4 or 5], an order terminating
14 the rental agreement and ordering immediate eviction of the
15 tenant shall be granted by default.

16 Section 8. Sheriff to aid in carrying out eviction
17 order. If requested by the landlord and upon being shown a
18 copy of the order terminating the rental agreement and
19 ordering immediate eviction, the sheriff of the county where
20 the leasehold premises are situated shall aid the landlord
21 in evicting the tenant from the leasehold premises.

22 Section 9. Care of tenant's personal property. If
23 the tenant is not present when the order terminating the
24 rental agreement and ordering immediate eviction is carried
25 out, the landlord shall use reasonable care to store and

1 preserve the tenant's personal property. The landlord may
2 either personally store and preserve the tenant's personal
3 property or store it in the tenant's name at a commercial
4 storage facility. The tenant is liable for the reasonable
5 cost of moving his personal property to the place of storage
6 and for the reasonable cost of storage.

7 Section 10. Effect of denial of eviction order. If an
8 order terminating the rental agreement and ordering
9 immediate eviction is denied, either because of the
10 operation of [section 6] or in the justice's discretion, the
11 landlord may not apply for another preeviction show cause
12 hearing based on the same set of facts. If the landlord
13 still desires to evict the tenant, he must proceed by an
14 action for unlawful detainer, as provided by Title 93,
15 chapter 97.

16 Section 11. Limited effect of hearing. The
17 preeviction hearing is for the sole purpose of determining
18 whether sufficient cause exists for the termination of a
19 rental agreement and the immediate eviction of a tenant. No
20 damages of any kind may be assessed at the hearing against
21 either the landlord or the tenant.

22 Section 12. [Act] supplementary remedy only. The
23 provisions of [this act] provide a supplementary remedy only
24 and do not repeal other remedies provided to landlords for
25 the termination of rental agreements and the eviction of

1 tenants.

2 Section 13. Tenant's security deposit rights not
3 abrogated. The provisions of [this act] shall not be
4 construed to abrogate a landlord's obligations under Title
5 42, chapter 3, regarding a tenant's security deposit.

6 Section 14. Severability. If a part of this act is
7 invalid, all valid parts that are severable from the invalid
8 part remain in effect. If a part of this act is invalid in
9 one or more of its applications, the part remains in effect
10 in all valid applications that are severable from the
11 invalid applications.

-End-

Judiciary
Objection Raised to
Adverse Committee Report

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