

Legislative Analysis



HOUSING DISCRIMINATION BASED ON INCOME SOURCE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 205 (proposed substitute H-1)
Sponsor: Sen. Mary Cavanagh

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

Senate Bill 206 (proposed substitute H-1)
Sponsor: Sen. Rosemary Bayer

Senate Bill 207 (proposed substitute H-1)
Sponsor: Sen. Jeff Irwin

House Bill 4062 (proposed substitute H-1)
Sponsor: Rep. Jennifer A. Conlin

House Bill 4063 (proposed substitute H-3)
Sponsor: Rep. Jason Morgan

House Committee: Judiciary

Senate Committee (SBs 205, 206, and 207): Housing and Human Services

Complete to 5-14-24

SUMMARY:

Taken together, Senate Bills 205 and 206 and House Bill 4062 would prohibit landlords with five or more rental units in Michigan from engaging in housing discrimination based on a tenant's source of income (e.g., housing assistance or veterans' benefits). In the case of a violation, the bills would allow a civil action to be filed for damages, injunctive relief (e.g., a court order to stop the violation), or both. Senate Bill 207 and House Bill 4063 would also allow a complaint to be filed with the Department of Civil Rights.

Senate Bills 205 and 206 and House Bill 4062 would amend 1972 PA 348, known as the landlord-tenant act. Senate Bill 205 contains the provisions described below, except for those described under "Remedies," which are in House Bill 4062, and Senate Bill 206 defines what *source of income* includes when used in those provisions.

Prohibitions

The bills would prohibit a **landlord** with five or more rental units in Michigan from doing any of the following to a current or prospective **tenant** based on their **source of income**:

- Denying or terminating a tenancy.
- Denying them a rental unit or making it unavailable to them when they would otherwise (i.e., if not for their source of income) be eligible to rent it.
- Attempting to discourage the rental or lease of a rental unit to them.
- Falsely representing to them that a rental unit is not available for inspection, rental, or lease; knowingly failing to bring a rental listing to their attention; or refusing to allow them to inspect a rental unit.
- Making a distinction or restriction against them in the price, terms, fees, or privileges related to the rental, lease, or occupancy of a rental unit—including, separately and specifically, doing so on the basis of their use of emergency rental assistance.
- Making a distinction or restriction against them in the provision of facilities or services related to the rental, lease, or occupancy of a rental unit.

- If the landlord requires tenants to have a certain threshold level of income, excluding any income in the form of a rent voucher or subsidy (but not emergency rental assistance) in calculating whether those criteria are met.

In addition, a landlord could not (by their own action or through another's) publish, circulate, or display a communication, notice, advertisement, or sign related to the rental or lease of a rental unit that indicates a preference, limitation, or requirement based on a source of income.

Finally, the bills would prohibit a landlord from doing either of the following:

- Assisting, inducing, inciting, or coercing another person to commit an act or engage in a practice that violates the bill.
- Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of a right granted or protected under the bill, because the person exercised or enjoyed a right granted or protected under the bill, or because the person aided or encouraged another person in the exercise or enjoyment of a right granted or protected under the bill.

Landlord means either of the following:

- The owner, lessor, or sublessor of a rental unit or the property it is a part of.
- A person authorized to exercise any aspect of the management of the premises. (This includes a person that, directly or indirectly, acts as a rental agent or receives rent, other than as a bona fide purchaser, and has no obligation to deliver the receipts to another person.)

Tenant means an individual who occupies a rental unit for residential purposes with the landlord's consent for an agreed-upon consideration.

Source of income would include benefits or subsidy programs such as housing assistance, housing choice vouchers provided under 42 USC 1437f, public assistance, veterans' benefits, Social Security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity. Source of income would *not* include either of the following:

- Income that a prospective tenant cannot demonstrate is derived from sources and activities allowed by law and is provided on an ongoing basis.
- Housing assistance that is not approved by the appropriate agency within 30 days after the landlord provides all information required as a condition of the agency's approval, including evidence that all repairs required before occupancy have been completed.

Applicability

As mentioned above, the bills would not apply to **persons** that, including their **related entities**, are landlords of fewer than five rental units in Michigan.

Person would mean an individual, partnership, corporation, association, limited liability company, or any other legal entity.

Related entity would mean a person that, directly or indirectly, controls, is controlled by, or is under common control with another person.

Remedies

A person alleging a violation of the above provisions could bring a civil action for appropriate injunctive relief or *damages*, or both, in the circuit court for the county where the alleged violation occurred or where the person the action is filed against resides or has their principal place of business.

Damages would mean actual damages for injury or loss caused by each violation, or up to three times the monthly rent for the rental unit or units at issue, whichever is less, together with court costs and reasonable attorney fees.

MCL 554.601 (SB 206) and proposed MCL 554.601c (SB 205) and 554.601 (HB 4062)

Senate Bill 207 and House Bill 4063 would amend the Elliott-Larsen Civil Rights Act. Senate Bill 207 contains substantive provisions described below, and House Bill 4063 adds the definition of *source of income* when used in those provisions.

Article 5 of the act prohibits discrimination in real estate transactions based on religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status [having children], or marital status. Taken together, the bills would amend Article 5 to prohibit discrimination based on a current or prospective tenant's source of income by landlords with five or more rental units in Michigan. These provisions (including the definitions of *landlord*, *tenant*, and *source of income*) would be identical to those of Senate Bills 205 and 206 as described above under "Prohibitions."

Applicability

As with Senate Bills 205 and 206, Senate Bill 207 would not apply to persons that, including their related entities, are landlords of fewer than five rental units in Michigan. Senate Bill 207 also would not apply to any of the following:

- The rental of a housing accommodation in a building that contains accommodations for up to two families living independently of each other (e.g., a duplex) if the owner or their spouse, parent, child, or sibling resides in one of the housing accommodations
- The rental of a room or rooms in a single-family dwelling if the lessor or their spouse, parent, child, or sibling resides in the dwelling.
- The rental of a housing accommodation for up to 12 months by the owner or lessor if it was occupied by the owner or lessor and maintained as their home for at least three months immediately before occupancy by the tenant and is maintained as the owner's or lessor's legal residence.

Remedies

Generally speaking, the Elliott-Larsen Civil Rights Act is enforced by the Michigan Civil Rights Commission, which through the Michigan Department of Civil Rights investigates and acts on discrimination complaints. In addition, a person alleging a violation of the act may bring a civil action for appropriate injunctive relief or *damages*, or both, in the circuit court for the county where the alleged violation occurred or where the person the action is filed against resides or has their principal place of business. The court may award the person filing the action all or part of the costs of litigation, including reasonable attorney fees and witness fees, as it determines appropriate.

Damages means damages for injury or loss caused by each violation of the act, including reasonable attorney fees.

MCL 37.2502

Senate Bills 205 and 206 and House Bill 4062 are tie-barred together, which means all three of those bills must be enacted for any one of them to take effect.

Senate Bill 207 and House Bill 4063 are tie-barred to one another and to Senate Bill 206 and could not take effect unless all three of those bills were enacted.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the state and on local court funding units. The fiscal impact would depend on how provisions of the bills affect court caseloads and related administrative costs. Costs would be incurred if the bills result in an increase in the number of civil cases filed. It is difficult to project the actual fiscal impact to courts due to variables such as judicial discretion, case types, and complexity of cases. An increase in civil case filings would result in additional filing fee revenue. Filing civil cases in court requires payment of a variety of fees, which depend on the value of the case. A portion of filing fee revenue is transmitted to the state and deposited into the Civil Filing Fee Fund. Revenue from the Civil Filing Fee Fund is distributed to a variety of state programs and fund sources on a percentage basis according to statute.

The bills also would likely lead to an increase in costs to the Department of Civil Rights. The cost increase would be related to additional staffing to support an anticipated increase in civil rights complaint cases on the basis of source of income, which would be a new protected group category under Article 5 of the Elliott-Larsen Civil Rights Act, as described above. The number of expected new cases and the corresponding number of staff needed to support the new caseload are not yet known. The annual salary costs for an additional complaint investigation investigator are approximately \$160,000. Complaint cases related to housing made up 250 cases, or 15% of all complaint cases received, in the 2022-23 fiscal year.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.