

Comments of the Michigan Poverty Law Program about HB 5566

Neither legal principles nor public policy rationale support [HB 5566](#).

HB 5566 would require district court judges (constraining their authority) to add to a possession judgment in an eviction case a fee equal to the monthly late payment fee a lease permits, at the greater of \$50 or 10% of the monthly rent (or a higher amount if a landlord shows it's "reasonable"). It would entitle landlords to these amounts as money damages in an eviction case, and of course, empower them to charge late fees at these exorbitant levels outside of eviction cases.

HB 5566 lacks a sound legal basis for the exorbitant late fees it would permit

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.¹

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 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 \$15/month.² The fee to costs relationship would be hugely unreasonable under HB 5566.

The HUD determined "[Fair Market Rent](#)" (FMR) for a 2- bedroom rental unit in Michigan ranges from \$757 to \$1262. FMR is a less than average rent, because it is set at the 40th 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 \$76 to \$126/month.

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

HB 5566 lacks a sound public policy basis

Besides HB5566's negative policy implications outlined above, there are others. This issue cannot properly be viewed apart from the affordable housing crisis that afflicts Michigan's low income (and many moderate income) families (which by way of state spending, Michigan does little to alleviate.) 28% of Michigan renter families are extremely low income (30% and below area median income). 73% 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)³ The pandemic has surely lifted these numbers. It's no wonder many of these families struggle to timely pay their rent. HB 5586 would only worsen their predicament by making it harder for them to "redeem" eviction judgments to avoid eviction. The affordable housing crisis is a significant, if not primary driver of our eviction and homelessness problems, which have widespread and lasting adverse impacts. Michigan should be looking at ways to reduce evictions and enhance housing stability, not worsen them, as this bill would, without good justification.

¹ See¹ *Curran v. Williams*, 352 Mich 278, 282 (1958).

² 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 form notice and postage at \$1, and the time of filling it out (10 minutes) at an hourly rate of \$30 (\$6), yields a notice prep cost of \$7, for a total of \$11.17.

³ See NLIHC report, [Housing Needs By State](#), based on Census Bureau data (ACS PUMS)