



House Bill 31

Committee: Judicial Proceedings

Date: March 30, 2021

Position: **Oppose**

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

HB 31 creates a \$68 surcharge that housing providers may not recover for the first three filings in a year. HB 31, like other bills the committee has heard this session, was offered with the intent of pricing housing providers out of access to the civil justice system. Further, when paired with HB 18/SB 154, the bill takes funds from all housing providers that file a failure to pay rent case, makes those funds unrecoverable, and provides the funds to attorneys for the explicit purpose of funding lawsuits against housing providers.

HB 31 is designed and intended to deter housing providers from accessing the civil justice system by making court costs *unrecoverable*. The stated intent of the bill is absolutely antithetical to the concept of justice, and court costs have never been weaponized by the Maryland General Assembly against an industry. Moreover, we are unaware of any state that makes court costs unrecoverable.

I. Affordable Housing

In its current posture, HB 31 exposes housing providers to significant costs per tenant, per year. According to a 2020 Department of Housing and Community Development report, Maryland has an overall deficit of approximately 85,000 affordable and available housing units. Statewide, there are 33 units available for every 100 extremely low-income households. Increasing the price of the filing fee and making that filing fee unrecoverable will increase the price of housing in the state and further exacerbate Maryland's affordable housing shortage.

In an effort to fund attorneys, HB 31 will price more low-income households out of the existing housing market. The right to counsel program is not required to be funded by increased, unrecoverable fees levied against housing providers. In New York City, the program is funded by the mayor's budget; in Cleveland, the program is funded by the city budget and philanthropic sources; in Newark, NJ, the program is funded in part by a contract with the city. There are other options for funding beyond policy changes that will decrease affordable housing stock in the state.

II. Other States and the "American Rule"

MMHA could not find another state in the country that makes court costs unrecoverable. To justify another similar bill, proponents argued that the "American Rule" was the standard in other states. First, the American Rule does not apply to court costs, it applies to attorney fees. Second,

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even if the American Rule did apply to court costs, the common exception to the rule is a contract, or in the case of housing providers, a lease. Finally, the commonly understood rationale behind the rule is that plaintiffs (here housing providers) should not be deterred from bringing a case in court for fear of costs – the *exact opposite* of the intent behind HB 31.

III. Filing Fee Increase

MMHA is supportive of a reasonable filing fee increase that is *fully* recoverable. As an example, MMHA respectfully requests that the committee review Virginia’s filing fee of [\\$46-\\$56](#) (summons for unlawful detainer) and Delaware’s filing fee of [\\$45](#). Please note that the \$68 surcharge contemplated in HB 31 is not the *total* filing fee. In Baltimore City, the total filing fee would become \$85 plus \$5 for each location, and the filing fee in the rest of the state would become \$75 plus \$5 for each tenant of record. Additionally, housing providers would still be required to pay an additional \$50 for the warrant of restitution in Baltimore, and \$40 for the warrant of restitution in the rest of the state. Thus, HB 31 would increase the total cost *fees* in the eviction process to \$140 in Baltimore City and \$120 in the rest of the state. These costs will make housing less affordable.

IV. Conclusion

MMHA respectfully requests that committee members consider that housing providers have not been immune from this pandemic. At a time when housing providers are experiencing revenue losses of more than 33%, the industry is now confronted with state legislation that would: **(1)** require *two* forms of notice before filing a failure to pay rent action - unlike any other state in the country (HB 52), **(2)** increase the surcharge fee 850% for filing a failure to pay rent action (HB 31); **(3)** render that surcharge fee unrecoverable - unlike any other industry (HB 31); **(4)** utilize that unrecoverable fee to fund lawsuits against housing providers (HB 18); **(5)** require housing providers to provide specific contact information for attorneys to tenants to facilitate the lawsuits (HB 52); and **(6)** establish a rent control provision during “catastrophic health emergencies” without any regard to the already negotiated agreements and ordinances at the local level (HB 1312).

MMHA supports a reasonable increase in the filing fee that is *fully recoverable*, and we are willing to work with the committee on the other aforementioned bills, but we cannot support a bill that is intended to limit housing providers’ access to the civil justice system through unrecoverable court costs. The Maryland General Assembly has not weaponized court costs against any other industry and attempting to price an industry out of access to the judicial system is antithetical to justice. Further, the right to counsel program can be funded through other budgetary mechanisms that will not exacerbate the state’s affordable housing shortage and price low-income households out of the rental market. For these reasons, MMHA respectfully requests an unfavorable report from the committee on HB 31.

V. Amendments

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AMENDMENT NO. 1

On page 3, line 18, strike “68” and insert “40”

On page 3, line 20, strike “30” and insert “16”

On page 3, line 21, strike “30” and insert “16”

AMENDMENT NO. 2

On page 4, line 1, strike “(5) IF ASSESSED UNDER ITEM (1) OF THIS PARAGRAPH, SHALL BE ASSESSED AGAINST A LANDLORD AND MAY NOT BE AWARDED OR ASSIGNED BY THE DISTRICT COURT AS A FEE OR COST AGAINST A RESIDENTIAL TENANT FOR THE FIRST THREE SURCHARGES ASSESSED IN A YEAR.”

AMENDMENT NO. 3

On page 5, line 13, strike “(9) PROVIDES THAT A TENANT IS, OR REQUIRES A TENANT TO AGREE TO BE RESPONSIBLE FOR THE FIRST THREE PAYMENTS OF A FILING SURCHARGE ASSESSED IN A YEAR AGAINST THE LANDLORD BY THE DISTRICT COURT UNDER § 7-301(C)(2)(I)(1) OF THE COURTS ARTICLE.”

On page 7, line 5, strike “EXCLUDING THE FIRST THREE SURCHARGES ASSESSED IN A YEAR AGAINST THE LANDLORD UNDER § 7-301(C)(2)(I)(1) OF THE COURTS ARTICLE,”