

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2385

Introduced by

Senators Paulson, Dever, Lee

Representatives Karls, Louser

1 A BILL for an Act to create and enact a new chapter to title 23, a new section to chapter 23-10,
2 and a new section to chapter 47-32 of the North Dakota Century Code, relating to receivers for
3 mobile home parks, annual ownership information for mobile home parks, mobile home park
4 tenant relations, and a defense to an eviction from a mobile home; to amend and reenact
5 sections 23-10-03, 23-10-04, 23-10-06, 23-10-06.2, 23-10-12, and 47-10-28 of the North
6 Dakota Century Code, relating to licensure and regulation of mobile home parks; and to provide
7 a penalty.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1.** A new chapter to title 23 of the North Dakota Century Code is created and
10 enacted as follows:

11 **Definitions**

12 For purpose of this chapter:

- 13 1. "Commissioner" means the commissioner of the department.
14 2. "Department" means the department of health and human services.

15 **Conditions for appointment of receiver.**

- 16 1. When the department revokes the license of a mobile home park, the department may
17 file a petition with the district court to place the mobile home park under the control of
18 a receiver for repeated or serious violations of chapter 23-10 or the administrative
19 rules of the department, or to protect health or safety.
20 2. The court may grant the petition after finding:
21 a. The mobile home park committed, or is continuing to commit repeated or serious
22 violations of chapter 23-10 or the administrative rules of the department; or

- b. Health or safety would be seriously threatened if a condition existing at the time the petition was filed continues.

Appointment of receiver.

If the court grants the petition to place the mobile home park into receivership, the court shall appoint the commissioner as receiver. The commissioner may designate a qualified individual or a nonprofit organization to execute the receivership. An individual designated to execute the receivership may not be employed by this state or a political subdivision. The receiver shall use the income and assets of the mobile home park to maintain and operate the mobile home park and to attempt to correct the violations of chapter 23-10, the administrative rules of the department, or other condition which constitutes a threat to health or safety. The receiver may not liquidate the assets of the mobile home park.

Termination of receivership.

The receivership terminates when:

1. The receiver and the court certify the conditions that prompted the receivership are corrected;
2. The license to operate the mobile home park is restored;
3. A new license to operate a mobile home park is issued; or
4. The owner of the mobile home park discontinues operation and the residents of the mobile home park have secured other appropriate housing.

Accounting.

Upon termination of the receivership, the receiver shall render a complete accounting to the court and shall dispose of surplus funds as the court directs.

SECTION 2. A new section to chapter 23-10 of the North Dakota Century Code is created and enacted as follows:

License - Information required - Penalty.

1. A new owner applying for a mobile home park license under section 23-10-03 and a person applying for a renewal mobile home park license under section 23-10-06.1, shall provide to the department once per calendar year the name, address, and telephone number for the mobile home park managers and any individual possessing more than a twenty percent ownership interest in the entity subject to the license.

2. The department may assess a civil penalty not exceeding five thousand dollars for each violation of this section thirty days after issuing a notice of noncompliance. The civil penalty may be assessed without notice and a hearing. The civil penalty must be awarded to the department and deposited into the department's general operating fund for use in regulating compliance with this chapter. A person subject to a civil penalty pursuant to an order issued under this section may request a hearing before the department if a written request is made within ten days after the receipt of the order. Upon receipt of a proper and timely request for a hearing, the department shall conduct an adjudicative proceeding under this section in accordance with chapter 28-32, unless otherwise provided for by law. If the department prevails in an adjudicative proceeding under this section, the department may assess the nonprevailing party for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation fees, and costs and expenses of the action.

SECTION 3. AMENDMENT. Section 23-10-03 of the North Dakota Century Code is amended and reenacted as follows:

23-10-03. License required - Application.

1. A person may not establish, maintain, change use, mix use, or enlarge a mobile home park, recreational vehicle park, or campground in this state without first obtaining a license from the department.
2. The application for the license must be made in writing to the department on forms furnished by the department, accompanied by the required fee, and must state the physical address of the proposed location and type of the mobile home park, recreational vehicle park, or campground, the and include:
 - a. Evidence of approval from local officials as to the proposed mobile home park, recreational vehicle park, or campground applicant's compliance with local zoning laws, ordinances, or regulations for the physical address for its intended use;
 - b. The proposed water supply, theincluding how water supply fee services are assessed or metered;
 - c. The proposed method of sewerage and garbage disposal; and such other
 - d. Other information as may be required by the department. Application forms must be prepared by the department and distributed upon request.

1 3. Upon a change of ownership, a new owner shall obtain a license within thirty days
2 from the date of sale. Failure of the owner to obtain licensure within thirty days from
3 the date of sale may result in disciplinary action against the owner for operating
4 without a license.

5 4. The department may not issue a license under this section if the proposed mobile
6 home park, recreational vehicle park, or campground would prevent, interfere, or
7 restrict proposed private development that is actively being pursued.

8 4.5. The department shall waive the license fee and inspection requirement for any mobile
9 home park, recreational vehicle park, or campground owned by the state, ~~a~~
10 ~~municipality, or a nonprofit organization~~ political subdivision. The department shall
11 waive all or a portion of the license fee for any mobile home park, recreational vehicle
12 park, or campground that is subject to local sanitation, safety, and inspection
13 requirements accepted by the department under section 23-10-02.1. ~~A prorated annual~~
14 ~~license fee may be charged for new mobile home parks, recreational vehicle parks,~~
15 ~~and campgrounds.~~ The department may adopt rules establishing the amount and the
16 procedures for the collection of annual license and inspection fees. The fees must be
17 based on the cost of reviewing construction plans, conducting preoperational, routine,
18 and complaint inspections, followup and reinspection, and necessary enforcement
19 action. ~~License fees~~ Fees collected ~~pursuant to~~ under this section must be deposited in
20 the department's operating fund in the state treasury and any expenditure from the
21 fund is subject to appropriation by the legislative assembly.

22 **SECTION 4. AMENDMENT.** Section 23-10-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23-10-04. Inspection.**

25 The department shall ~~may~~ inspect the premises as soon as practical after receiving an
26 application for a mobile home park, recreational vehicle park, or campground license. If the
27 department is satisfied from the application ~~and~~ or inspection that the mobile home park,
28 recreational vehicle park, or campground will not be a source of danger to the health and safety
29 of the occupants or the general public, the department shall notify the applicant of approval of
30 the application ~~and of the amount of the license fee~~. The department must have access to and
31 may inspect mobile home parks, recreational vehicle parks, and campgrounds at reasonable

1 times. The department may inspect each mobile home park, recreational vehicle park, and
2 campground in response to a complaint, violation of state law, or on a routine schedule
3 determined by the department.

4 **SECTION 5. AMENDMENT.** Section 23-10-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **23-10-06. License issuance –Fee.**

7 ~~An applicant seeking licensure shall apply to the department on forms prescribed by the~~
8 ~~department. The applicant shall enclose with the application an application fee as determined~~
9 ~~by rule. The department shall issue a license to an applicant who meets all of the requirements~~
10 ~~of this chapter and any rules adopted by the department.~~

11 **SECTION 6. AMENDMENT.** Section 23-10-06.2 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23-10-06.2. ~~License transferability~~Licenses not transferable.**

14 ~~The department shall transfer a license without charge if the proposed new owner applies in~~
15 ~~writing for a transfer of the license and certifies that the mobile home park, recreational vehicle~~
16 ~~park, or campground will be operated in accordance with this chapter. A new owner applying for~~
17 ~~a transfer under this section and a person holding a license issued under section 23-10-03,~~
18 ~~shall provide the name, address, and telephone number for the mobile home park managers~~
19 ~~and any individual possessing more than a twenty percent ownership interest in the entity~~
20 ~~subject to the license to the department once per calendar year. The department may assess a~~
21 ~~civil penalty not exceeding five thousand dollars for each violation of this section thirty days~~
22 ~~after issuing a notice of noncompliance. The civil penalty may be assessed without notice and a~~
23 ~~hearing. The civil penalty must be awarded to the department and deposited into the~~
24 ~~department's general operating fund for use in regulating compliance with this chapter. A person~~
25 ~~subject to a civil penalty pursuant to an order issued under this section may request a hearing~~
26 ~~before the department if a written request is made within ten days after the receipt of the order.~~
27 ~~Upon receipt of a proper and timely request for a hearing, the department shall conduct an~~
28 ~~adjudicative proceeding under this section in accordance with chapter 28-32, unless otherwise~~
29 ~~provided for by law. If the department prevails in an adjudicative proceeding under this section,~~
30 ~~the department may assess the nonprevailing party for all adjudicative proceeding and hearing~~

costs, including reasonable attorney's fees, investigation fees, and costs and expenses of the action. Licenses under this chapter are not transferable.

SECTION 7. AMENDMENT. Section 23-10-12 of the North Dakota Century Code is amended and reenacted as follows:

23-10-12. Revocation or suspension of license - Penalty for operating without license.

1. The department may deny an application or take disciplinary action, up to and including suspension or revocation of a license for a mobile home park, recreational vehicle park, or campground, ~~and revocation of a license for a recreational vehicle park or campground,~~ against any applicant or licensee upon the failure of the applicant or licensee to comply with this chapter or with any of the rules and regulations promulgated by the department.
2. Before the department takes disciplinary action against a license, the department shall notify the licensee in writing of the reason disciplinary action is being considered and shall provide a reasonable amount of time for correction to be made. Action taken under the authority granted in this section must comply with chapter 28-32. Any person who maintains or operates a mobile home park, recreational vehicle park, or campground without first obtaining a license, or who operates the same during suspension of the license, is guilty of ~~an infraction~~ a class B misdemeanor.
3. The department may assess a civil penalty of one hundred dollars per day against a person who maintains or operates a mobile home park, recreational vehicle park, or campground without first obtaining a license. The civil penalty may not exceed ten thousand dollars. The proceeds of the civil penalty must be transferred to the department's general operating fund.

SECTION 8. AMENDMENT. Section 47-10-28 of the North Dakota Century Code is amended and reenacted as follows:

47-10-28. Mobile home park - Ownership - Transfer of ownership - Tenant rights - Penalty.

1. A person that owns or purchases an existing mobile home park shall:
 - a. Obtain an annual license under section 23-10-03;

- 1 b. Designate an official local office, except if the mobile home park contains fewer
2 than twenty-six lots, which must be operational on the fifth business day after the
3 change of ownership;
- 4 c. The mobile home park shall:
 - 5 (1) Have a designated telephone number manned on weekdays between the
6 hours of eight a.m. and five p.m.;
 - 7 (2) Have an operational emergency contact number manned at all times;
 - 8 (3) Designate at least one individual for the property who has the authority to
9 make decisions on behalf of and perform, or direct the performance of,
10 duties imposed on the owner; and
 - 11 (4) Provide a tenant with the contact information of the individual under
12 paragraph 3;
- 13 d. Provide written notice to a tenant of the mobile home park regarding the change
14 of ownership within five business days after the change of ownership becomes
15 effective. The written notice must include the information required under
16 subdivision c;
- 17 e. Acknowledge receipt of tenant inquiries or complaints regarding the park,
18 pursuant to section 23-10-10.1, within two business days of receiving the inquiry
19 or complaint;
- 20 f. Provide to each tenant, upon a written request by the tenant or the tenant's
21 agent, a copy of the existing lease terms along with any modifications or
22 amendments, within ten business days of receipt of a written request;
- 23 g. Provide each tenant with the name, address, and telephone number of the legal
24 entity that owns the mobile home park; and
- 25 h. Provide the telephone number of any existing property manager or designated
26 site agent.
- 27 2. Before the sale or transfer of a mobile home park, the owner of a mobile home park
28 shall provide residents of the park a right of first refusal to purchase the mobile home
29 park. The owner of the mobile home park shall provide the residents ninety days to
30 obtain financing to exercise the right of first refusal.

1 3. A person that owns or purchases an existing mobile home park may not require a
2 tenant who owns a mobile home located on the property to sell or transfer ownership
3 of the home to the owner of the mobile home park, except as otherwise provided by
4 law.

5 ~~3.4.~~ A person that owns or purchases an existing mobile home park shall provide a tenant
6 advance written notice of any modifications to park rules or regulations at least thirty
7 days before the date the modifications take effect. Except for the rules and regulations
8 under subsections 45 and 56, upon the effective date of modifications to park rules
9 and regulations, an owner shall provide a tenant who owns a dwelling unit that fails to
10 comply with the park rules and regulations written notice of the failure to comply and
11 provide the tenant three months to remedy the failure or vacate the premises before
12 initiating an action for eviction against the tenant. During the three-month period the
13 tenant shall comply with the park rules and regulations that were in effect before the
14 modifications became effective, including the payment of rent and any other financial
15 obligations under the terms of the lease. During the three-month period, if the tenant
16 provides the owner a signed document from a person in the business of relocating
17 mobile homes declaring it is not possible to relocate the tenant's dwelling unit within
18 the three-month period, the three-month period must be extended to a date when the
19 dwelling unit can be relocated or the date that is two months after the end of the
20 three-month period, whichever date occurs first.

21 4.5. A person that owns or purchases an existing mobile home park shall provide a tenant
22 advance written notice of any modifications to park rules and regulations addressing
23 sanitation and safety concerns at least thirty days before the date the modifications
24 take effect.

25 5.6. A person that owns or purchases an existing mobile home park shall provide a tenant
26 advance written notice at least thirty days before implementing a rule or regulation
27 regarding the removal of a tongue hitch, or any other modification to the dwelling unit
28 to comply with state or federal housing or financing requirements.

29 6.7. Mobile home park rules in effect on the date advance written notice regarding
30 modifications is provided to a tenant remain in effect until the date the modified rules
31 or regulations take effect.

1 ~~7.8.~~ A person that purchases an existing mobile home park may not increase the monthly
2 tenant rental obligation for six months if the rental amount was increased within the
3 sixty-day period before the date the new owner acquired ownership of the park. Any
4 month-to-month tenancy agreement must provide a minimum of ninety days' notice to
5 the tenant before any rent increase is effective.

6 ~~8.9.~~ A person that owns or purchases an existing mobile home park may purchase utility
7 services, including water and sewer services on behalf of a tenant, and include the
8 amount in the monthly rental obligation or bill the tenant as a separate charge based
9 on actual usage. An owner may not charge a tenant more than the actual cost per unit
10 amount paid by the landlord to the utility service provider, except for a reasonable
11 administrative fee that may not exceed three dollars. An owner may not charge or
12 back charge for the utility services of a tenant paying for the services as a portion of
13 the tenant's monthly rental obligation, unless the cost of providing the services
14 increases. If the cost of providing utility services increases, an owner of a mobile home
15 park may charge a tenant a reasonable amount to cover the increased cost of
16 providing the service. A mobile home park may not charge a fee for a utility without an
17 individual meter for each mobile home. The owner shall provide the tenant access to
18 the records of meter readings taken at the mobile home lot of the tenant.

19 ~~10.~~ A mobile home park owner shall provide a tenant with a summary outlining the
20 tenant's lease and the rights and obligations of the tenant and mobile home park
21 owner under state law.

22 ~~11.~~ A notice of intent to evict a tenant from a mobile home park under section 47-32-02
23 must include clear, boldfaced language stating: "You do not have to vacate
24 immediately. You have the right to remain until a court issues an eviction order."

25 ~~12.~~ A mobile home park may not charge a monthly late fee of more than ten percent of the
26 monthly rent. In addition to the monthly late fee, a mobile home park may not charge a
27 daily late fee of more than five dollars per day.

28 ~~9.13.~~ A person that violates a provision of this section is subject to a civil penalty not less
29 than two thousand five hundred dollars but not exceeding the greater of ten thousand
30 dollars or actual damages, plus actual attorney's fees and costs.

~~10-14.~~ A mobile home park license, issued under chapter 23-10, may be suspended by the district court of the county where the mobile home park is situated for a violation of this section. The holder of the mobile home park license must be assessed a civil penalty for each day the holder's license remains suspended. The amount of the daily penalty is equal to half of the total rent listed on the rent roll for the mobile home park divided by the number of days in that month. The license holder must prove each violation has been remedied and has satisfied all civil penalties assessed before the license holder's license may be reinstated. The district court has discretion over the terms to be satisfied before a license is reinstated. If a license holder fails to comply with the terms of the district court's order, the district court may revoke the holder's license. All park tenants must be allowed to continue to reside in the mobile home park through the duration of the license suspension, unless the department of health and human services takes further disciplinary action against the license under chapter 23-10. During the period of suspension, the license holder or the license holder's agent may not modify the park rules or regulations, modify any tenant's rental arrangement, increase any tenant's rental rate, or terminate any tenant's lease without cause.

~~11-15.~~ In a dispute between a landlord and a tenant under this section, the district court of the county in which the dispute arose has original jurisdiction over the dispute relating to the suspension of a license. For the recovery of civil damages under subsection 913, the tenant may elect to commence the action in small claims court or district court. If an action between a landlord and tenant is commenced, the tenant shall continue paying rent and comply with all park rules and regulations in effect at the time the action was commenced. During a pending action under this section, the license holder or the license holder's agent may not modify the park rules or regulations, modify the tenant's rental arrangement, increase a tenant's monthly rental rate, or terminate a tenant's lease without cause.

SECTION 9. A new section to chapter 47-32 of the North Dakota Century Code is created and enacted as follows:

Defense to an eviction from a mobile home park.

During an eviction proceeding against a tenant of a mobile home park, a tenant may present a defense that the landlord violated a provision of section 47-10-28. If the court finds

- 1 the landlord violated a provision section 47-10-28, the court may not order an eviction. In a
- 2 second or subsequent eviction proceeding, a tenant only may raise violations that arose after a
- 3 prior order between the parties was entered, or violations that were unknown to the court at the
- 4 time of the prior order.