

Some of the legal concerns with SEA 148

1. Section 17

voids all existing and prospective ordinances and regulations by local units of government, unless specifically authorized by an act of the Indiana General Assembly.

Ordinances would be voided in 8 different areas, including local regulation of screening process for rentals, disclosures concerning the property, lease, or rights and responsibilities of the parties in a landlord-tenant relationship, and *“any other aspect of the landlord-tenant relationship.”*

Without question, this would impact ordinances in Bloomington, Indianapolis, and West Lafayette, in areas relating to required notice to tenants of rights and responsibilities by landlords, process for inspections, protections from retaliation, local requirements for smoke detector maintenance in rental properties, and maybe even preference for military service/veterans in rentals, or certain other housing anti-discrimination protections not in state or federal law. It is possible this also impacts Columbus, Evansville, Michigan City, and South Bend. It was mentioned that this may also impact Merrillville, which was considering an ordinance, and Fort Wayne additionally weighed in with opposition stating that this bill prohibits them from creating local solutions to address their housing instability issues. (Attached is the letter of opposition from the City of Fort Wayne.)

One of the biggest issues here is the unknown. During conference committee, the absurdly abbreviated testimony, allowed only under protest, ended up focusing on how many local ordinances or rules would be affected by the preemption. *No one knew the answer.* Not the author, not the apartment owners, not AIM. This highlights one of the problems with this legislation. When it is pushed through in 2 weeks without any real hearing or input, there is not sufficient time to find out what it would do. At a minimum, there needs to be a survey of local ordinances to find out what exists around the state, why these are in effect (e.g, different needs in college towns and heavily urban areas), and what parts of their ordinances would be voided. This is not an insignificant issue, and it needs to be addressed in a deliberative and informed manner.

2. Section 18.

This significantly impacts renter protections under existing landlord-tenant law, the retaliation “protections” are full of loopholes, and may be completely negated or modified by landlords through non-negotiable form leases.

a. Landlords are permitted to nullify or alter retaliation language

When landlord-tenant law was crafted in recent years, through a democratic process and opportunity for input by all stakeholders, chapters creating obligations and rights for both landlords and tenants each incorporate a provision that neither landlord or tenant may waive that chapter, by contract or otherwise. **See IC 32-31-5-1, IC 32-31-7-4, IC 32-31-8-4, IC 32-31-9-1.** The reason for these provisions is that courts may allow a waiver of statutory rights by contract. Leases are often forms distributed by landlord associations, and are not negotiable. It is therefore possible that all rights in statute are rendered meaningless if boilerplate contract language negates those rights.

In conference committee, minority conferees presented compromise language, part of which would have inserted this standard non-waiver provision into the retaliation chapter. This, and all compromise language, was rejected summarily by the author, and both conferees were thereafter removed from the committee. A court is therefore extremely likely to look at the statutes in totality and conclude that the General Assembly intended that rights pertaining to retaliation are waivable by contract or agreement, since this section does not include the language of the other sections, and any rights for tenants under this chapter become illusory.

b. Diminishment of renter protections and loopholes in retaliation language

In describing what acts a landlord may perform and not be retaliating, IC 32-31-8.5.-5 crosses the line by expanding existing law as to when emergency possessory actions may be used. These emergency actions, for which a hearing must currently be set in 3 days and a tenant evicted immediately, are only available to the landlord when a tenant is committing waste. This was intended to protect landlords who need to immediately evict a tenant who is destroying the property.

The new language states when a landlord may bring an action, **including a petition for emergency possessory order.** This includes *7 additional* conditions under which emergency possession could now be sought. One of the allowable causes of action would be when “compliance with an applicable building or housing code requires alteration, remodeling or demolition of the rental premises.....” (Note, not that the code compliance is not even required to affect health or safety.) So, tenant complains about substandard housing conditions. In retaliation, a landlord files for emergency possession to kick out the tenant in 3 days, alleging that the landlord needs to ‘alter or remodel’ to be in compliance with the code.

****Please note that this is a situation in which the tenant has done NOTHING wrong. However, after reporting a housing condition, that tenant is now subject to being evicted in 3 days, with an eviction now on his or her record. And once an eviction is of record, a tenant has a significantly more difficult time procuring a new rental. In essence, this is *enabling*, rather than preventing, retaliatory eviction.**

Another aspect of expanding “emergency possessory orders” to non-emergency cases, and to cases in which a tenant is not at fault, can impact emergency orders from the judicial branch. In response to COVID-19, some courts are suspending non-emergency evictions. Enactment of SEA 148 could immediately create a substantial number of new evictions technically classified as “emergency”, potentially increasing the number of people evicted from their homes in 3 days, unable to self-quarantine or adequately care for the health of their households, and possibly exposing more in the public to infection.

Some of the deficiencies in “protections” for tenant

Prohibits a rent increase in retaliation, but a retaliatory rent increase could be excused as non-retaliatory if raised to a comparable market rental, even if the tenant is the only one singled out for the rent increase.

Only protects reports to a governmental entity enforcing local building and housing codes if “*materially affecting health and safety.*” (Note contrast with possessory actions grounds in which compliance with code is not required for a reason materially affecting health and safety.) Tenant could here in good faith report violations and then be evicted in retaliation, if a court determines after the fact that these were not “materially affecting health and safety.”

Only protects a “written” complaint to the landlord concerning habitability. While a written complaint is of course best practice to prove notice, un-informed tenants may simply call or speak to the landlord about the issue, and then be subjected to eviction in retaliation, without protection. (“Written” is not required in uniform act or by other states.)

Only protects “Testifying in a court proceeding or an administrative hearing against the landlord. “ Good, but doesn’t include actually pursuing an administrative or judicial remedy against the landlord, if there is no occasion for testimony. (Narrower than the uniform act and laws in other states.)

Tenants in Indiana do need protection from retaliation from reporting or pursuing action against a landlord for uninhabitable conditions, but this law does not provide these protections, and in fact may actually enable more and faster retaliatory evictions.