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Bill Analysis
Legislative Service Commission

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Reps. Hoops, Peterson, Seitz, Calvert, Fessler, Setzer, Husted, Callender, Evans, Carmichael, Hollister, Widowfield, Olman, Jolivette, Webster, Niehaus, Blasdel, Allen, Hartnett, Patton

BILL SUMMARY

- Provides that a forcible entry and detainer action may be taken against a manufactured home park resident, or the estate of a manufactured home resident, who has been absent for 30 consecutive days, whose manufactured or mobile home or recreational vehicle has been left unoccupied during that period, and who has not paid the rent due.
- Requires the judge in a forcible entry and detainer action to include in a judgment entered in favor of a plaintiff who is a park operator the authority for the plaintiff to permit the removal and potential sale, destruction, or transfer of ownership of the defendant's manufactured home, mobile home, or recreational vehicle.
- Requires a park operator to provide to the titled owner of the home or vehicle a written notice to remove a manufactured home, mobile home, or recreational vehicle from a manufactured home park within seven days of the delivery of the notice if the owner has been evicted and has abandoned the home or vehicle or otherwise left it unoccupied for three days following the eviction, and provides specified language for the notice.
- Requires the park operator before requesting a writ of execution under the Forcible Entry and Detainer Law, to conduct a search of public records in order to identify any persons who have an outstanding right, title, or interest in the home or vehicle that is the subject of the writ and requires the operator to include the name and last known address of those persons on its request for the writ of execution.

- Includes specific language that is to be contained in a writ of execution on a judgment of restitution that is issued under the Forcible Entry and Detainer Law against a manufactured home park resident or the estate of a manufactured home resident.
- Provides the procedure the sheriff, police officer, constable, or bailiff must follow, after receiving a writ of execution in a forcible entry and detainer action involving a manufactured home, mobile home, or recreational vehicle and after causing the defendant to be removed from the residential premises of the manufactured home park, for the removal and sale of the manufactured home, mobile home, or recreational vehicle and for the distribution of the proceeds from the sale.
- Requires the county auditor to issue a relocation notice without requiring the payment of any taxes owed on a manufactured home or mobile home if the home is moved by a sheriff, police officer, constable, bailiff, or manufactured home park owner for the purposes of removal from the park and storage, sale, or destruction of the home pursuant to a judgment under the Forcible Entry and Detainer Law.
- Requires that the make and model of each manufactured or mobile home be included in a manufactured home court's or park's registry under certain specified circumstances.

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CONTENT AND OPERATION

Persons subject to forcible detainer action

Existing law

Under existing law, the following persons may be subject to a forcible entry and detainer action (FE & D action) under the following circumstances (R.C. 1923.02(A)):

(1) When tenants or manufactured home park residents are holding over their terms;

(2) When tenants or manufactured home park residents are in possession under an oral tenancy and are in default in the payment of rent;

(3) In certain cases involving sales of real estate, on executions, orders, or other judicial process, against the judgment debtor;

(4) In certain cases in sales by executors, administrators, or guardians, and on partition against a party in possession;

(5) When the defendant is an occupier of lands or tenements, without color of title, and the complainant has the right of possession to them;

(6) In any other case of unlawful and forcible detention of lands or tenements;

(7) In cases arising out of R.C. Chapter 5313. (law regarding land installment contracts);

(8) Against tenants who have breached an obligation that is imposed by R.C. 5321.05 (law regarding the obligations of a tenant) and that materially affects health and safety;

(9) Against tenants who have breached an obligation imposed upon them by a written rental agreement;

(10) Against manufactured home park residents who have defaulted in the payment of rent or breached the terms of a rental agreement with a manufactured home park operator;

(11) Against manufactured home park residents who have committed two material violations of the rules of the manufactured home park, of the public health council, or of applicable state and local health and safety codes and who have been notified of the violations;

(12) Against occupants of self-service storage facilities who have breached the terms of a rental agreement or violated R.C. 5322.04 (prohibits a self-storage facility from being used for residential purposes).

Operation of the bill

The bill provides that an FE & D action may also be taken against a manufactured home park resident, or the estate of a manufactured home park resident, who has been absent from the manufactured home park for a period of 30 consecutive days prior to the commencement of the action and whose manufactured home or mobile home, or recreational vehicle parked in the manufactured home park, has been left unoccupied for that 30-day period, without notice to the park operator and without payment of rent due under the rental agreement with the park operator. The bill also specifies that nothing in the authorization to bring an FE & D action against a manufactured home park resident who has defaulted in the payment of rent or breached a term of a rental agreement precludes the commencement of action brought pursuant to the above provision when the additional circumstances described above apply. (R.C. 1923.02(A)(12) and (10).)

Action tried by judge and entry of verdict

Existing law provides that if an FE & D action is not continued, the place of the trial has not changed, and neither party demands a jury on the return day of the summons, a judge of the court must try the cause. After hearing the evidence, if the judge concludes that the complaint is not true, the judge must enter judgment against the plaintiff for costs. If the judge finds the complaint to be true, the judge must render a general judgment against the defendant for restitution of the premises and costs of suit. If the judge finds the complaint true in part, the judge must render a judgment for restitution of that part only, and the costs must be taxed as the judge considers just. (R.C. 1923.09.) If a jury trial renders a verdict, existing law provides that the court must enter that verdict upon the judgment, and render the judgment in the action as if the facts, authorizing the finding of the verdict, had been found by the court itself (R.C. 1923.11).

The bill provides that if a judgment is entered in favor of the plaintiff in an FE & D action under either of the above provisions in which the plaintiff is a park operator, the judge must include in the judgment entry authority for the plaintiff to permit, in accordance with specified procedures in the bill, the removal and potential sale, destruction, or transfer of ownership of the resident's manufactured home, mobile home, or recreational vehicle (R.C. 1923.09(B) and 1923.11(B)).

Notice of eviction

Under the bill, a park operator of a manufactured home park from which a resident or a resident's estate has been evicted pursuant to a judgment under the FE & D Law, if the resident or estate has abandoned or otherwise left unoccupied the resident's manufactured home, mobile home, or recreational vehicle on the residential premises for a period of three days following the entry of judgment, provide to the titled owner of the home or vehicle a written notice to remove the home or vehicle from the manufactured home park within seven days from the date of the delivery of the notice. Delivery of the notice may be by personal delivery to the owner or by ordinary mail sent to the last known address of the owner. If the manufactured home, mobile home, or recreational vehicle is not removed from the manufactured home park within seven days from the date of delivery of the notice, the park operator may follow the procedures discussed below under "**Writ of execution for judgment**" and "**Removal of property**" to permit the removal and potential sale, destruction, or transfer of ownership of the home or vehicle. (R.C. 1923.12(A).)

The bill also provides that every notice provided to the titled owner of a manufactured home, mobile home, or recreational vehicle must contain specific language set forth in the bill in a conspicuous manner (R.C. 1923.12(B)).

The bill also states that, before requesting a writ of execution, the park operator must conduct or cause to be conducted a search of the appropriate public records that relate to the manufactured home, mobile home, or recreational vehicle and make or cause to be made reasonably diligent inquiries for the purpose of identifying any persons who have an outstanding right, title, or interest in the home or vehicle. If the search or inquiries reveal any person who has an outstanding right, title, or interest in the manufactured home, mobile home, or recreational vehicle, the park operator must list the name and last known address of each such person on its request for the writ of execution. The park operator also must certify on the request that the required written notice has been provided. (R.C. 1923.12(C).)

Writ of execution for judgment

Existing law

Under existing law, when a judgment of restitution is entered by a court in an FE & D action, the court, at the request of the plaintiff or the plaintiff's agent or attorney, must issue a writ of execution on the judgment in the following form, as near as practicable:

"The state of Ohio, county; To any constable or police officer, of township, city, or village; or To the sheriff of county; or To any authorized bailiff of the (name of court):

Whereas, in a certain action for the forcible entry and detention (or the forcible detention, as the case may be), of the following described premises, to wit: , lately tried before this court, wherein was plaintiff, and was defendant, judgment was rendered on the day of , , that the plaintiff have restitution of those premises; and also that he recover the costs in the sum of You therefore are hereby commanded to cause the defendant to be forthwith removed from those premises, and the plaintiff to have restitution of them; also, that you levy of the goods and chattels of the defendant, and make the costs previously mentioned and all accruing costs, and of this writ make legal service and due return.

Witness my hand, this day of , A.D.
. Judge, (name of court)"

Operation of the bill

Under the bill, when a judgment of restitution is entered in an FE & D action against a manufactured home park resident or the estate of a manufactured home park resident, at the request of the plaintiff or plaintiff's agent or attorney, the court must issue a writ of execution on the judgment. The writ of execution must as near as practicable be the same as a form set forth in the bill. That form contains similar language to that described above for a writ of execution (see "Existing law," above and also includes the following language (R.C. 1923.13(B)):

"Further, you are authorized to cause the subject manufactured home, mobile home, or recreational vehicle, and all personal property and vehicles of the defendant on the residential premises, to be, at your option, either (1) removed from the manufactured home park and, if necessary, moved to a storage facility of your choice, or (2) retained at their current location on the residential premises, until they are disposed of in a manner authorized by this writ or the law of this state.

If the subject manufactured home, mobile home, or recreational vehicle has been abandoned by the defendant and the requirements of section 1923.12 of the Revised Code have been satisfied, you are hereby authorized to cause the sale of the home or vehicle in accordance with division (B)(3) of section 1923.14 of the Revised Code. A search of appropriate public records or other reasonably diligent inquiries reveals the following persons, whose last known addresses are listed next to their names, may continue to have an outstanding right, title, or interest in the home or vehicle:
. . If you are unable to sell the subject manufactured home, mobile home, or recreational vehicle due to a want of bidders, after it is offered for sale on two occasions, you are hereby commanded to cause the presentation of this writ to the clerk of this court for the issuance of a certificate of title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances, in accordance with division (B)(3) of section 1923.14 of the Revised Code.

If the subject manufactured home, mobile home, or recreational vehicle has been so abandoned and has a value of less than three thousand dollars and if the requirements of section 1923.12 of the Revised Code have been satisfied, you are hereby authorized to either cause the sale or destruction of the home or vehicle, or to cause the presentation of this writ to the clerk of this court for the issuance of a certificate of title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances, in accordance with section 1923.14 of the Revised Code.

Upon this writ's presentation to the clerk of this court under the circumstances described in either of the two preceding paragraphs and in accordance with division (B)(3) or (4) of section 1923.14 of the Revised Code, as applicable, the clerk is hereby commanded to issue a certificate of title transferring the title of the subject



manufactured home, mobile home, or recreational vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances, in the manner prescribed in section 4505.10 of the Revised Code.

Witness my hand, this day of
. Judge (name of court). "

Enforcement of writ of execution

Existing law

Under existing law, within ten days after receiving a writ of execution on a judgment of restitution that is entered by a court in an FE & D action, the sheriff, police officer, constable, or bailiff must execute the writ by restoring the plaintiff to possession of the premises and must levy and collect the costs and make return. If an appeal from the judgment of restitution is filed and if, following the filing of the appeal, a stay of execution is obtained and any required bond is filed with the court of common pleas, municipal court, or county court, the judge of that court immediately must issue an order to the sheriff, police officer, constable, or bailiff commanding the delay of all further proceedings upon the execution. If the premises have been restored to the plaintiff, the sheriff, police officer, constable, or bailiff must place the defendant in possession of the premises and return the writ with the sheriff's, police officer's, constable's, or bailiff's proceedings and the costs taxed on it. (R.C. 1923.14.)

Operation of the bill

The bill provides specific procedures for enforcing a writ of execution in an FE & D action involving a manufactured home, mobile home, or recreational vehicle. It provides that, after a court of common pleas, municipal court, or county court issues a writ of execution in an FE & D action involving such property, the clerk of the court must send by regular mail, to the last known address of the titled owner of the subject manufactured home, mobile home, or recreational vehicle and to the last known address of each other person who is listed on the writ as having any outstanding right, title, or interest in the home or vehicle, a written notice that the home or vehicle potentially may be sold, destroyed, or have its title transferred under circumstances described below. (R.C. 1923.14(B)(1).)

Removal of property

Under the bill, after receiving a writ of execution in an FE & D action involving a manufactured home, mobile home, or recreational vehicle, and after



causing the defendant to be removed from the residential premises of the manufactured home park, if necessary, in accordance with the writ, the sheriff, police officer, constable, or bailiff may cause the subject manufactured home, mobile home, or recreational vehicle and all personal property and vehicles of the defendant on the residential premises, at the sheriff's, police officer's, constable's, or bailiff's option, either to be removed from the manufactured home park and, if necessary, moved to a storage facility of the sheriff's, police officer's, constable's, or bailiff's choice, or to be retained at their current location on the residential premises, until they are claimed by their owner or they are disposed of in a manner provided under the bill.

The bill also provides that neither the sheriff, police officer, constable, or bailiff nor any party authorized by the sheriff, police officer, constable, or bailiff to remove the manufactured home, mobile home, or recreational vehicle or the personal property and vehicles of the defendant on the residential premises are liable for any damage caused to the home, any vehicle, or any personal property during the removal. The reasonable costs for a removal of the manufactured home, mobile home, or recreational vehicle and, as applicable, the reasonable costs for its storage constitute a lien upon the home or vehicle payable by its titled owner or payable pursuant to the provision discussed below under **'Proceedings for the sale of property.'** (R.C. 1923.14(B)(2).)

Proceedings for the sale of property

The bill provides generally that, within 60 days after receiving a writ of execution in an FE & D action involving a manufactured home, mobile home, or recreational vehicle, the sheriff, police officer, constable, or bailiff must commence proceedings for the sale of the manufactured home, mobile home, or recreational vehicle in accordance with the procedures for the sale of goods on execution, if it is determined to be abandoned. In addition to all notices generally required to be given under existing law, the sheriff, police officer, constable, or bailiff must serve a written notice of the date, time, and place of the sale upon all persons who are listed on the writ of execution as having any outstanding right, title, or interest in the abandoned manufactured home, mobile home, or recreational vehicle, at their respective last home address. (R.C. 1923.14(B)(3).)

Distribution of proceeds from sale of property

The bill states that, notwithstanding any statutory provisions to the contrary, there may be no stay of execution or exemption for levy or sale on execution available to the titled owner of an abandoned manufactured home, mobile home, or recreational vehicle in relation to a sale that arises out of a judgment in an FE & D action involving a manufactured home, mobile home, or recreational vehicle. The proceeds from the sale of an abandoned manufactured

home, mobile home, or recreational vehicle must be distributed in the following order (R.C. 1923.14(B)(3)):

(a) First, to pay the costs for any moving of and any storage outside the manufactured home park of the home or vehicle, the costs of the sale, and any unpaid court costs assessed against the defendant in the underlying action;

(b) Second, to pay all outstanding tax liens on the home or vehicle;

(c) Third, to pay all other outstanding security interests, liens, or encumbrances on the home or vehicle by priority of filing or other priority;

(d) Fourth, to pay any outstanding monetary judgment rendered in favor of the plaintiff and any costs associated with retaining the home or vehicle prior to the sale at its location on the residential premises within the manufactured home park;

(e) After complying with (a) through (d) above, the remaining money must be distributed into the county treasury to the credit of the general fund.

The bill provides that, upon the return of any writ of execution in an FE & D action for the satisfaction of which an abandoned manufactured home, mobile home, or recreational vehicle has been sold, on careful examination of the proceedings of the sheriff, police officer, constable, or bailiff conducting the sale, if the court that issued the writ finds that the sale was made, in all respects with the relevant provisions of R.C. Chapter 2329. (laws regarding execution of property) and as provided above, it must direct the clerk of the court to make an entry on the journal that the court is satisfied with the legality of the sale and to issue a certificate of title, free and clear of all security interests, liens, and encumbrances, to the purchaser of the home or vehicle. (R.C. 1923.14(B)(3).)

Procedure if the property has not been sold

If, after it is offered for sale on two occasions, the abandoned manufactured home, mobile home, or recreational vehicle cannot be sold due to a want of bidders, the sheriff, police officer, constable, or bailiff must present the writ of execution unsatisfied to the clerk of the court that issued the writ for issuance by the clerk of a certificate of title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances. If any taxes are owed on the home or vehicle at this time, the county auditor must remove the delinquent taxes from the manufactured home tax list and remit any penalties for late payment of manufactured home taxes. Acceptance of the certificate of title by the plaintiff terminates all further proceedings under the bill. (R.C. 1923.14(B)(3).)

Procedure regarding property that is less than \$3,000

The bill provides that, within 60 days after receiving a writ of execution, if a manufactured home, mobile home, or recreational vehicle is determined to be abandoned and to have a value of less than \$3,000, the sheriff, police officer, constable, or bailiff must serve a written notice of potential action upon all persons who are listed on the writ as having any outstanding right, title, or interest in the home or vehicle, at their respective last known addresses. This notice must be in addition to all notices required to be given under existing law. Subject to the fulfillment of these notice requirements, the sheriff, police officer, constable, or bailiff must take one of the following actions with respect to the abandoned manufactured home, mobile home, or recreational vehicle (R.C. 1923.14(B)(4)):

(a) Cause its destruction if there is no outstanding right, title, or interest in it;

(b) Proceed with its sale;

(c) Present the writ of execution to the clerk of court that issued the writ for the issuance by the clerk of a certificate of title transferring the title of the home or vehicle to the plaintiff, free and clear of all security interests, liens, and encumbrances, if there is no outstanding right, title, or interest in the home or vehicle. If any taxes are owed on the home or vehicle at this time, the county auditor must remove the delinquent taxes from the manufactured home tax list and the delinquent manufactured home tax list and remit any penalties for late payment of manufactured home taxes. Acceptance of the certificate of title by the plaintiff terminates all further proceedings.

Circumstances in which a park operator may bring an action for possession of the premises

Under existing law, generally a park operator may bring an action under the Forcible Entry and Detainer Law for possession of the premises if (R.C. 3733.091(A)):

(1) The resident is in default in the payment of rent.

(2) The violation of the applicable building, housing, health, or safety code that the resident complained of was primarily caused by any act or lack of reasonable care by the resident, by any other person in the resident's household, or by anyone on the premises with the consent of the resident.

(3) The resident is holding over the resident's term.

(4) The resident is in violation of the rules of the public health council or rules of the manufactured home park.

The bill expands the above list by providing that a park operator also may bring an action under the Forcible Entry and Detainer Law for possession of the premises if the resident has been absent from the manufactured home park for a period of 30 consecutive days prior to the commencement of the action, and the resident's manufactured home, mobile home, or recreational vehicle has been left unoccupied for that 30-day period, without notice to the park operator and without payment of rent due under the rental agreement (R.C. 3733.091(A)(5)).

Relocation notice for manufactured or mobile home

Existing law provides that before moving a manufactured or mobile home on public roads from one address within this state to another address within or outside this state, the owner of the home must obtain a relocation notice from the auditor of the county in which the home is located if the home is currently subject to taxation pursuant to the law regarding manufactured and mobile home taxes. The auditor must not issue a relocation notice unless all taxes owed on the home that were first charged to the home during the period of ownership of the owner seeking the relocation notice have been paid. If the home is being moved by a new owner of the home or by a party taking repossession of the home, the auditor must not issue a relocation notice unless all of the taxes due for the preceding five years and for the current year have been paid. A relocation notice issued by a county auditor is valid until December 31 of the year in which it was issued. (R.C. 4503.061(H)(1).)

The bill modifies the existing procedure for providing relocation notices by providing that if a manufactured or mobile home is being moved by a sheriff, police officer, constable, bailiff, or manufactured home park operator, or any agent of any of these persons, for purposes of removal from a manufactured home park and storage, sale, or destruction under the Forcible Entry and Detainer Law, the auditor must issue a relocation notice without requiring payment of any taxes owed on the home (R.C. 4503.061(H)(1)).

Manufactured home registers

Under existing law, every operator of a manufactured home court, or park, or when there is no operator, every owner of property used for such purposes on which three or more manufactured or mobile homes are located, must keep a register of all manufactured and mobile homes that make use of the court, park, or property. The register must contain all of the following (R.C. 4503.062):

- (1) The name of the owner and all inhabitants of each home;



- (2) The ages of all inhabitants;
- (3) The permanent and temporary post office addresses of all inhabitants;
- (4) The license number of each unit;
- (5) The state issuing each license;
- (6) The date of arrival and of departure of each home.

The bill expands the contents of the above-described register by requiring that the make and model of each home be included in the registry, if known and if either of the following applies (R.C. 4503.062(A)):

(a) The home enters the court, park, or property on or after January 1, 2003.

(b) Ownership of the home in the court or park, or on the property, is transferred on or after January 1, 2003.

The bill also makes minor modifications to the existing language in R.C. 4503.062.

HISTORY

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Introduced	02-20-02	p. 1435

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