

CHAPTER 1138**MOBILE HOME ABANDONMENT AND DISPOSAL***S.F. 2259*

AN ACT relating to the disposal of abandoned mobile homes and abandoned personal property of the abandoned mobile home owner.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. **NEW SECTION. 562C.1 DEFINITIONS.**

Unless the context otherwise requires, in this chapter:

1. "Demolisher" means demolisher as defined in section 321.89.
2. "Junkyard" means junkyard as defined in section 306C.1.
3. "Claimant" includes any government subdivision with authority to levy a tax on abandoned personal property.
4. "Personal property" includes personal property of the mobile home owner in the abandoned mobile home, on the mobile home lot, in the immediate vicinity of the abandoned mobile home and the mobile home lot, and in any storage area provided by the real property owner for the use of the mobile home owner.
5. "Real property owner" means the owner or other lawful possessor of real property upon which a mobile home is located.

Sec. 2. **NEW SECTION. 562C.2 REMOVAL — NOTICE TO SHERIFF.**

1. A real property owner may remove or cause to be removed a mobile home and other personal property which is unlawfully parked, placed, or abandoned on that real property, and may cause the mobile home and personal property to be placed in storage until the owner of the personal property pays a fair and reasonable charge for removal, storage, or other expense incurred, including reasonable attorneys' fees, or until a judgment of abandonment is entered pursuant to section 562C.8 provided that there is no lien on the mobile home or personal property other than a tax lien pursuant to chapter 135D. For purposes of this chapter, a lien exists only if the real property owner receives notice of a lien on the standardized registration form completed by a tenant pursuant to section 562B.27, subsection 3, or a lien has been filed in state or county records on a date before the mobile home is considered to be abandoned. The real property owner or the real property owner's agent is not liable for damages caused to the mobile home and personal property by the removal or storage unless the damage is caused willfully or by gross negligence.

2. The real property owner shall notify the sheriff of the county where the real property is located of the removal of the mobile home and other personal property.

a. If the mobile home owner can be determined, and if the real property owner so requests, the sheriff shall notify the mobile home owner of the removal by restricted certified mail. If the mobile home owner cannot be determined, and the real property owner so requests, the sheriff shall give notice by one publication in one newspaper of general circulation in the area where the mobile home and personal property was unlawfully parked, placed, or abandoned. If the mobile home and personal property have not been claimed by the owner within six months after notice is given, the mobile home and personal property shall be sold by the sheriff at a public or private sale. After deducting costs of the sale the net proceeds shall be applied to the cost of removal and storage of the property. The remainder, if any, shall be paid to the county treasurer.

b. If the real property owner removes the mobile home and personal property but does not request that the sheriff notify the mobile home owner, the real property owner shall proceed with an action for abandonment as provided in sections 562C.3 through 562C.9.

Sec. 3. NEW SECTION. 562C.3 ACTION FOR ABANDONMENT — JURISDICTION.

A real property owner not requesting notification by the sheriff as provided in section 562C.2 may bring an action alleging abandonment in the court within the county where the real property is located provided that there is no lien on the mobile home or personal property other than a tax lien pursuant to chapter 135D. The action shall be tried as an equitable action. Unless commenced as a small claim, the petition shall be presented to a district judge. Upon receipt of the petition, the court shall order a hearing not later than fourteen days from the date of the order.

Sec. 4. NEW SECTION. 562C.4 NOTICE.

1. Personal service pursuant to rule of civil procedure 56.1 shall be made upon the mobile home owner not less than ten days before the hearing. If personal service cannot be completed in time to give the mobile home owner the minimum notice required by this section, the court may set a new hearing date.

2. If personal service cannot be made on the mobile home owner because the mobile home owner is avoiding service or cannot be found, service may be made by mailing a copy of the petition and notice of hearing to the mobile home owner's last known address and publishing the notice in one newspaper of general circulation in the county where the petition is filed. If the mobile home owner's address is not known to the real property owner, service may be made pursuant to rule of civil procedure 62 except that service is complete seven days after the initial publication. The court shall set a new hearing date if necessary to allow the ten-day minimum notice required under subsection 1 of this section.

3. If a lien exists on the mobile home or personal property, the real property owner shall notify the county treasurer of each county in which a tax lien appears by restricted certified mail sent not less than ten days before the hearing. The notice shall describe the mobile home and shall state the date and time at which the hearing is scheduled, and the county treasurer's right to assert a claim to the mobile home at the hearing. The notice shall also state that failure to assert a claim to the mobile home is deemed a waiver of all right, title, claim, and interest in the mobile home and is deemed consent to the sale or disposal of the mobile home.

Sec. 5. NEW SECTION. 562C.5 CHANGE OF VENUE.

In an action under this chapter a change of place of trial may be had as in other cases.

Sec. 6. NEW SECTION. 562C.6 PRIORITY OF ASSIGNMENT.

An action under this chapter shall be accorded reasonable priority for assignment to assure prompt disposition.

Sec. 7. NEW SECTION. 562C.7 REMEDY NOT EXCLUSIVE.

An action under this chapter may be brought in connection with a claim for monetary damages, possession, or recovery as provided in section 562B.25 or 562B.30 or chapter 648.

Sec. 8. NEW SECTION. 562C.8 JUDGMENT.

1. If the court determines that the mobile home and personal property have been abandoned, judgment shall be entered in favor of the real property owner for the reasonable costs of removal, storage, notice, and attorneys' fees; any other expenses incurred for preserving the mobile home and personal property or for bringing the action; and, if the action is brought in conjunction with one for monetary damages, the amount of monetary damages assessed.

2. If the mobile home owner or other claimant asserts a claim to the property, the judgment shall be satisfied before the mobile home owner or other claimant may take possession of the mobile home or personal property.

3. If no claim is asserted to the mobile home or personal property or if the judgment is not satisfied at the time of entry, an order shall be entered allowing the real property owner to sell or otherwise dispose of the mobile home and personal property pursuant to section 562C.9. If

a claimant satisfies the judgment at the time of entry, the court shall enter an order permitting and directing the claimant to remove the mobile home or personal property from its location within a reasonable time to be fixed by the court. The court shall also determine the amount of further rent or storage charges to be paid by the claimant to the real property owner at the time of removal.

Sec. 9. NEW SECTION. 562C.9 DISPOSAL — PROCEEDS.

1. Pursuant to an order for disposal under section 562C.8, subsection 3, the real property owner shall dispose of the mobile home and personal property by public or private sale in a commercially reasonable manner. If the personal property owner or other claimant has asserted a claim to the mobile home or personal property, that person shall be notified of the sale by restricted certified mail not less than five days before the sale. The notice is deemed given upon the mailing. The real property owner may buy at any public sale, and if the mobile home or personal property is of a type customarily sold in a recognized market or is the subject of widely distributed standard price quotations, the real property owner may buy at a private sale.

2. A sale pursuant to subsection 1 transfers to the purchaser for value, all of the mobile home owner's rights in the mobile home and personal property, and discharges the real property owner's interest in the mobile home and personal property and any tax lien. The purchaser takes free of all rights and interests even though the real property owner fails to comply with the requirements of this chapter or of any judicial proceedings, if the purchaser acts in good faith.

3. The proceeds of the sale of mobile home and personal property shall be distributed as follows:

a. First, to satisfy the real property owner's judgment obtained under section 562C.8.

b. Second, to satisfy any tax lien for which a claim was asserted pursuant to section 562C.4, subsection 3.

c. Any surplus remaining after the proceeds are distributed shall be held by the real property owner for six months. If the mobile home owner fails to claim the surplus in that time, the surplus may be retained by the real property owner. If a deficiency remains after distribution of the proceeds, the mobile home owner is liable for the amount of the deficiency.

4. Notwithstanding subsections 1 through 3, the real property owner may propose to retain the mobile home and personal property in satisfaction of the judgment obtained pursuant to section 562C.8. Written notice of the proposal shall be sent to the mobile home owner or other claimant, if that person has asserted a claim to the mobile home or personal property in the judicial proceedings. If the real property owner receives objection in writing from the mobile home owner or other claimant within twenty-one days after the notice was sent, the real property owner shall dispose of the mobile home and personal property pursuant to subsection 1. If no written objection is received by the real property owner within twenty-one days after the notice was sent, the mobile home and personal property may be retained. Retention of the mobile home and personal property discharges the judgment of the real property owner and any tax lien.

5. If the real property owner has made a good faith attempt to sell the mobile home and personal property pursuant to subsection 1 but is unsuccessful and elects not to retain the mobile home and personal property pursuant to subsection 4, the real property owner may dispose of the mobile home and personal property to a demolisher or junkyard. Proceeds from the disposition shall be distributed pursuant to subsection 3. If the personal property is a motor vehicle to which section 321.90 applies, the real property owner shall present the order for disposal obtained pursuant to section 562C.8, subsection 3, to the police authority to obtain a certificate of authority to dispose of the motor vehicle pursuant to section 321.90, subsection 2.

Sec. 10. NEW SECTION. 562C.10 LIMITATION ON LIABILITY.

1. A real property owner who disposes of a mobile home or personal property in accordance with this chapter is not liable for damages by reason of the removal, sale, or disposal of the mobile home and personal property unless the damage is caused willfully or by gross negligence. Upon a motion to the district court and a showing that the real property owner is not proceeding in accordance with this chapter, the court may enjoin the real property owner from proceeding further and a determination for the proper disposition of the mobile home and personal property shall be made. If disposition of the personal property has not occurred in accordance with this chapter, the personal property owner has a right to recover from the real property owner, any loss caused by failure to comply with this chapter.

2. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the real property owner is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the real property owner sells the mobile home and personal property in the usual manner in any recognized market or if the real property owner sells at the price current in the market at the time of the real property owner's sale or if the real property owner has otherwise sold in conformity with reasonable commercial practices among dealers in the type of mobile home or personal property sold, the real property owner has sold in a commercially reasonable manner. A disposition approved in any judicial proceeding shall be deemed conclusively to be commercially reasonable.

Sec. 11. Section 135D.24, subsection 6, Code Supplement 1987, is amended to read as follows:

6. Before a mobile home may be moved from its present site by the owner or the owner's assignee, a tax clearance statement in the name of the owner must be obtained from the county treasurer of the county where the present site is located certifying that taxes are not owing under this section for previous years and that the taxes have been paid for the current tax period. However, a tax clearance statement shall ~~is not be~~ required for a mobile home in a manufacturer's or dealer's stock which is not used as a place for human habitation. A tax clearance form is not required to move an abandoned mobile home. A tax clearance form is not required in eviction cases provided the mobile home park owner or manager advises the county treasurer that the tenant is being evicted. If a dealer acquires a mobile home from a person other than a manufacturer, the person shall provide a tax clearance statement in the name of the owner of record to the dealer. The tax clearance statement shall be provided by the county treasurer and ~~shall be made out in quadruplicate in a method prescribed by the department of transportation. Two copies are to be provided to the company or person transporting the mobile home with one copy to be carried in the vehicle transporting the mobile home. One copy is to be forwarded to the county treasurer of the county in which the mobile home is to be relocated and one copy is to be retained by the county treasurer issuing the tax clearance statement.~~

Sec. 12. Section 321.90, subsection 2, paragraph b, Code 1987, is amended to read as follows:

b. The application shall set out the name and address of the applicant, and the year, make, model, and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or a statement that the title of the motor vehicle is lost or destroyed, or the reasons for the defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged are true and that no material fact has been withheld. An order for disposal obtained pursuant to section 562C.8, subsection 3, satisfies the application requirements of this paragraph.

Sec. 13. Section 321.90, subsection 2, paragraph c, Code 1987, is amended to read as follows:

c. If the police authority finds that the application is executed in proper form, and shows that the motor vehicle has been abandoned upon the property of the applicant, or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner,

the police authority shall follow appropriate notification procedures as set forth in section 321.89, subsection 3, except that in the case of an order for disposal obtained pursuant to section 562C.8, subsection 3, no notification is required.

Sec. 14. Section 321.90, subsection 2, paragraph g, Code 1987, is amended to read as follows:

g. Any proceeds from the sale of an abandoned motor vehicle to a demolisher under this section, by one other than the owner of the vehicle, except the sale of a vehicle pursuant to an order for disposal obtained pursuant to section 562C.8, subsection 3, shall first be applied to that person's expenses in effecting the sale, including storage, towing, and disposal charges, and any surplus shall be distributed in accordance with section 321.89, subsection 4. The proceeds from the sale of a vehicle disposed of pursuant to section 562C.8, subsection 3, shall be distributed in accordance with section 562C.9.

Sec. 15. Section 562B.13, subsection 3, Code 1987, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. To remove, store, and dispose of a mobile home if it is abandoned as defined in section 562B.27.

Sec. 16. Section 562B.27, Code 1987, is amended by striking the section and inserting in lieu thereof the following:

562B.27 REMEDIES FOR ABANDONMENT – REQUIRED REGISTRATION.

1. A tenant is considered to have abandoned a mobile home when the tenant has been absent from the mobile home without reasonable explanation for thirty days or more during which time there is a default of rent three days after rent is due, or the rental agreement is terminated pursuant to section 562B.25.

2. When a mobile home is abandoned on a mobile home space:

a. If a tenant abandons a mobile home on a mobile home space, the landlord shall notify the mobile home owner or other claimant of the mobile home and communicate to that person that the person is liable for any costs incurred for the mobile home space, including rent and utilities due and owing. However, the person is only liable for costs incurred ninety days before the landlord's communication. After the landlord's communication, costs for which liability is incurred shall then become the responsibility of the mobile home owner or other claimant of the mobile home. The mobile home shall not be removed from the mobile home space without a signed written agreement from the landlord showing clearance for removal, and that all debts are paid in full, or an agreement reached with the mobile home owner or other claimant and the landlord.

b. If there is no lien on the mobile home other than a lien for taxes, the landlord shall follow the procedure in chapter 562C to dispose of the mobile home.

c. An action pursuant to chapter 562C may be combined with an action for possession under chapter 648 or an action for damages under section 562B.30.

3. A required standardized registration form shall be filled out by each tenant upon the rental of a mobile home space, showing the mobile home make, year, serial number, and also showing if the mobile home is paid for, if there is a lien on the mobile home, and if so the lienholder, and the name of the legal owner of the mobile home. The registration forms shall be kept on file with the landlord as long as the mobile home is on the mobile home space within the mobile home park. The tenant shall give notice to the landlord within ten days of any new lien, change of existing lien, or settlement of lien.

Sec. 17. Section 648.19, Code 1987, is amended to read as follows:

648.19 NO JOINDER OR COUNTERCLAIM – EXCEPTION.

An action of this kind shall not be brought in connection with any other action, with the exception of a claim for rent or recovery as provided in sections 562A.24, 562A.32, 562B.22, ~~or~~ 562B.25, or 562B.27, nor shall it be made the subject of counterclaim.

Sec. 18. Section 135D.24, subsection 4, Code Supplement 1987, is amended to read as follows:

4. The tax is a lien on the vehicle senior to any other lien upon it except a judgment obtained in an action to dispose of an abandoned mobile home under section 562C.8. The mobile home bearing a current registration issued by any other state and remaining within this state for an accumulated period not to exceed ninety days in any twelve-month period is not subject to Iowa tax. However, when one or more persons occupying a mobile home bearing a foreign registration are employed in this state, there is no exemption from the Iowa tax. This tax is in lieu of all other taxes general or local on a mobile home.

Approved May 2, 1988

CHAPTER 1139

PROPERTY TAX CREDITS, RENT REIMBURSEMENTS, AND MOBILE HOME TAXES FOR ELDERLY AND DISABLED

S.F. 2188

AN ACT relating to the mobile home annual tax, the property tax credit and rent reimbursement for elderly and disabled individuals by changing the formula used for determining the amount of the annual tax, credit and reimbursement and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 135D.22, subsection 2, Code Supplement 1987, is amended to read as follows:

2. If the owner of the mobile home is an Iowa resident, was totally disabled, as defined in section 425.17, subsection 6 on or before December 31 of the base year, is a surviving spouse having attained the age of fifty-five years on or before December 31 of the base year, 1988 or has attained the age of sixty-five years on or before December 31 of the base year and has an income when included with that of a spouse which is less than five thousand dollars per year, no annual tax shall be imposed on the mobile home. If the income is five thousand dollars or more but less than twelve thousand dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
\$ 5,000 — 5,999.99	6.0 cents
	<u>3.0</u>
6,000 — 6,999.99	10.0
	<u>6.0</u>
7,000 — 7,999.99	12.0
	<u>9.0</u>
8,000 — 8,999.99	14.0
9,999.99	<u>12.0</u>
9,000	
10,000 — 11,999.99	15.0

For purposes of this subsection "income" means income as defined in section 425.17, subsection 1, and "base year" means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The mobile home reduced rate of tax shall only be allowed on the mobile home in which the claimant is residing at the time in which the claim for a reduced rate of tax is filed.

Sec. 2. Section 425.17, subsections 5 and 9, Code 1987, are amended to read as follows: