

FILED FEB 27 1989

Judiciary

SENATE FILE 292
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 102)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to property rights and methods of enforcement by
2 altering the relative rights of tenants and landlords,
3 including, but not limited to, mobile home park tenants and
4 landlords and by granting small claims concurrent jurisdiction
5 over certain mobile home and personal property abandonment
6 actions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 292

S-3177

1 Amend Senate File 292 as follows:
2 1. Page 4, line 9, by inserting after the word
3 "lienholder" the following: "who is not a state or
4 federally regulated financial institution".

By C. JOSEPH COLEMAN

S-3177 FILED MARCH 7, 1989

SE 292

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S-3255 amends all-

1 Section 1. Section 321.47, unnumbered paragraph 1, Code
2 1989, is amended to read as follows:

3 In the event of the transfer of ownership of a vehicle by
4 operation of law as upon inheritance, devise or bequest, order
5 in bankruptcy, insolvency, replevin, foreclosure or execution
6 sale, abandoned vehicle sale, or when the engine of a motor
7 vehicle is replaced by another engine, or a vehicle is sold or
8 transferred to satisfy an artisan's lien as provided in
9 chapter 577, a landlord's lien as provided in chapter 570, or
10 a storage lien as provided in chapter 579, or a judgment in an
11 action for abandonment of a mobile home as provided in chapter
12 562C, or repossession is had upon default in performance of
13 the terms of a security agreement, the county treasurer in the
14 transferee's county of residence, upon the surrender of the
15 prior certificate of title or the manufacturer's or importer's
16 certificate, or when that is not possible, upon presentation
17 of satisfactory proof to the county treasurer of ownership and
18 right of possession to the vehicle and upon payment of a fee
19 of ten dollars and the presentation of an application for
20 registration and certificate of title, may issue to the
21 applicant a registration card for the vehicle and a
22 certificate of title to it. The persons entitled under the
23 laws of descent and distribution of an intestate's property to
24 the possession and ownership of a vehicle owned in whole or in
25 part by a decedent, upon filing an affidavit stating the name
26 and date of death of the decedent, the right to possession and
27 ownership of the persons filing the affidavit, and that there
28 has been no administration of the decedent's estate, which
29 instrument shall also contain an agreement to indemnify
30 creditors of the decedent who would be entitled to levy
31 execution upon the motor vehicle to the extent of the value of
32 the motor vehicle, are entitled upon fulfilling the other
33 requirements of this chapter, to the issuance of a
34 registration card for the interest of the decedent in the
35 vehicle and a certificate of title to it. No requirement of

1 chapter 450 or 451 shall be considered satisfied by the filing
2 of the affidavit provided for in this section. If, from the
3 records in the office of the county treasurer, there appear to
4 be any liens on the vehicle, the certificate of title shall
5 contain a statement of such the liens unless the application
6 is accompanied by proper evidence of their satisfaction or
7 extinction. Evidence of extinction may consist of, but is not
8 limited to, an affidavit of the applicant stating that a
9 security interest was foreclosed as provided in Uniform
10 Commercial Code, chapter 554, Article 9, Part 5.

11 Sec. 2. Section 535.2, Code 1989, is amended by adding the
12 following new subsection:

13 NEW SUBSECTION. 7. This section does not apply to a
14 charge imposed for late payment of rent.

15 Sec. 3. Section 562B.25, Code 1989, is amended by striking
16 the section and inserting in lieu thereof the following:

17 562B.25 NONCOMPLIANCE WITH RENTAL AGREEMENT BY TENANT --
18 FAILURE TO PAY RENT.

19 1. Except as provided in this chapter, if there is a
20 material noncompliance by the tenant with the rental
21 agreement, the landlord may deliver a written notice to the
22 tenant specifying the act or omission constituting the breach
23 and that the rental agreement will terminate upon a date not
24 less than thirty days after receipt of the notice if the
25 breach is not remedied in fourteen days. If there is a
26 noncompliance by the tenant with section 562B.18 materially
27 affecting health and safety, the landlord may deliver a
28 written notice to the tenant specifying the act or omission
29 constituting the breach and that the rental agreement will
30 terminate upon a date not less than thirty days after receipt
31 of the notice if the breach is not remedied in fourteen days.
32 However, if the breach is remediable by repair or the payment
33 of damages or otherwise, and the tenant adequately remedies
34 the breach prior to the date specified in the notice, the
35 rental agreement does not terminate.

1 2. If substantially the same act or omission which
2 constituted a prior noncompliance for which notice was given
3 recurs within six months, the landlord may proceed as follows:

4 a. If the noncompliance by the tenant is with section
5 562B.18, subsection 1, 4, or 5, the landlord may terminate the
6 rental agreement if the tenant fails to remedy the breach
7 within three days after written notice by the landlord of the
8 subsequent breach and of the landlord's intention to terminate
9 the rental agreement.

10 b. If the noncompliance by the tenant is with section
11 562B.18, subsection 2 or 3, the landlord may terminate the
12 rental agreement if the tenant fails to remedy the breach
13 within three days after written notice by the landlord of the
14 subsequent breach and of the landlord's intention to terminate
15 the rental agreement if the breach is not remedied within that
16 period of time.

17 c. The landlord may terminate the rental agreement or
18 pursue other remedies as provided in this chapter or the
19 rental agreement.

20 Sec. 4. Section 562B.27, subsection 1, Code 1989, is
21 amended to read as follows:

22 1. A tenant is considered to have abandoned a mobile home
23 when the tenant has been absent from the mobile home without
24 reasonable explanation for thirty days or more during which
25 time there is a default of rent three days after rent is due,
26 or the rental agreement is terminated pursuant to section
27 562B.25. A tenant's return to the mobile home does not change
28 its status as abandoned unless the tenant pays to the landlord
29 all costs incurred for the mobile home space, including costs
30 of removal, storage, notice, attorneys' fees, and all rent and
31 utilities due and owing.

32 Sec. 5. Section 562B.27, subsection 2, paragraph a, Code
33 1989, is amended to read as follows:

34 a. ~~if a tenant abandons a mobile home on a mobile home~~
35 ~~space, the~~ The landlord shall notify the mobile home owner or

1 other claimant of the mobile home and communicate to that
2 person that the person is liable for any costs incurred for
3 the mobile home space, including rent and utilities due and
4 owing. However, the person is only liable for costs incurred
5 up to ninety days before the landlord's communication. After
6 the landlord's communication, costs for which liability is
7 incurred ~~shall then~~ become the responsibility of the mobile
8 home owner or other claimant of the mobile home. The mobile
3077-9 home owner or lienholder cannot avoid the liability imposed by
10 this section by conveying or releasing the interest in the
11 mobile home after notification of abandonment is given by the
12 landlord. The mobile home shall not be removed from the
13 mobile home space without a signed written agreement from the
14 landlord showing clearance for removal, and that all debts are
15 paid in full, or an agreement reached with the mobile home
16 owner or other claimant and the landlord. For the purposes of
17 this section, "claimant" includes all lienholders on the
18 mobile home.

19 Sec. 6. Section 562B.27, subsection 2, paragraph b, Code
20 1989, is amended to read as follows:

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

24 Sec. 7. Section 562B.32, subsection 1, paragraph b, Code
25 1989, is amended to read as follows:

26 b. The tenant has complained to the landlord of a
27 violation under section 562B.16 which actually existed at the
28 time of the tenant's complaint.

29 Sec. 8. Section 562B.32, subsection 2, Code 1989, is
30 amended to read as follows:

31 2. If the landlord acts in violation of subsection 1 of
32 this section, the tenant is entitled to the remedies provided
33 in section 562B.24 and has a defense in an action for
34 possession. In an action by or against the tenant, evidence
35 of a valid complaint referred to in subsection 1, paragraph

1 "a" or "b", within six months prior to the alleged act of
2 retaliation creates a presumption that the landlord's conduct
3 was in retaliation. The presumption does not arise if the
4 tenant made the complaint after notice of termination of the
5 rental agreement, nor does the presumption arise if the
6 landlord can show one or more nonretaliatory reasons for the
7 landlord's actions. For the purpose of this subsection,
8 "presumption" means that the trier of fact must find the
9 existence of the fact presumed unless and until evidence is
10 introduced which would support a finding of its nonexistence.
11 In cases where the presumption does not arise, the burden of
12 proof remains on the tenant and retaliation shall not be found
13 unless it is found that the landlord's actions would not have
14 occurred but for a retaliatory motive.

15 Sec. 9. Section 562C.4, Code 1989, is amended to read as
16 follows:

17 562C.4 NOTICE.

18 1. Personal service pursuant to rule of civil procedure
19 ~~56:~~ 56 shall be made upon the mobile home owner not less than
20 ten days before the hearing. If personal service cannot be
21 completed in time to give the mobile home owner the minimum
22 notice required by this section, the court may set a new
23 hearing date.

24 2. If personal service cannot be made on the mobile home
25 owner because the mobile home owner is avoiding service or
26 cannot be found, service may be made ~~by mailing a copy of the~~
27 ~~petition and notice of hearing to the mobile home owner's last~~
28 ~~known address and publishing the notice in one newspaper of~~
29 ~~general circulation in the county where the petition is filed.~~
30 ~~If the mobile home owner's address is not known to the real~~
31 ~~property owner, service may be made pursuant to rule of civil~~
32 ~~procedure 62~~ as provided in rule of civil procedure 60 except
33 that publication of original notice need be published only
34 once and service is complete seven days after the ~~initial~~
35 publication. The court shall set a new hearing date if

1 necessary to allow the ten-day minimum notice required under
2 subsection 1 of this section.

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

15 Sec. 10. Section 631.1, Code 1989, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 4. The district court sitting in small
18 claims has concurrent jurisdiction of an action for
19 abandonment of a mobile home or personal property pursuant to
20 section 562C.3, if no money judgment in excess of two thousand
21 dollars is sought. When commenced under this chapter, the
22 action is a small claim for the purposes of this chapter.

23 Sec. 11. Section 631.4, Code 1989, is amended by adding
24 the following new subsection:

25 NEW SUBSECTION. 3. Actions for abandonment of mobile
26 homes or personal property pursuant to chapter 562C.

27 a. In an action for abandonment of a mobile home or
28 personal property, the clerk shall set a date, time, and place
29 for hearing, and shall cause service to be made as provided in
30 this subsection.

31 b. Original notice shall be served personally on each
32 defendant as provided in rule 56 or rule 60 of the rules of
33 civil procedure. The service shall be made at least ten days
34 prior to the date set for hearing. Upon receipt of the
35 prescribed costs, the clerk shall cause the original notice to

1 be delivered to a peace officer or other person for service
2 upon each defendant.

3 Sec. 12. Section 631.5, unnumbered paragraph 1, Code 1989,
4 is amended to read as follows:

5 This section ~~shall apply~~ applies to all small claims except
6 actions for forcible entry or detention of real property and
7 actions for abandonment of mobile homes or personal property,
8 or both, pursuant to chapter 562C.

9 Sec. 13. Section 648.19, Code 1989, is amended to read as
10 follows:

11 648.19 NO JOINDER OR COUNTERCLAIM -- EXCEPTION.

12 An action of this kind shall not be brought in connection
13 with any other action, with the exception of a claim for rent
14 or recovery as provided in sections section 562A.24, 562A.32,
15 562B.22, 562B.25, or 562B.27, or 562C.3, nor shall it be made
16 the subject of counterclaim. When joined with an action for
17 rent or recovery as provided in section 562A.24, 562A.32,
18 562B.22, 562B.25, 562B.27, or 562C.3, notice of hearing as
19 provided in section 648.5 is sufficient.

20 EXPLANATION

21 This bill increases the procedural options available to
22 mobile home park landlords and alters the relative rights of
23 mobile home park tenants and landlords.

24 Section 1 amends section 321.47 to permit the transfer of
25 title by operation of law for a mobile home adjudged abandoned
26 in the same manner as a landlord's lien is enforced.

27 Section 2 provides that a charge for late payment of rent
28 is not subject to the restrictions on the permissible rates of
29 interest contained in Code section 535.2, the state usury law.
30 This provision includes rent from other persons than just
31 mobile home park tenants, and applies to tenants of all kinds
32 of property.

33 Section 3 provides a new option for a mobile home park
34 landlord to terminate a mobile home space rental agreement
35 with shorter notice and termination periods when the tenant

1 repeats a material noncompliance with the rental agreement.

2 Section 4 amends section 562B.27 to provide that once a
3 tenant has abandoned a mobile home, the landlord may continue
4 to consider the mobile home to be abandoned even though the
5 tenant returns to the mobile home, unless and until the tenant
6 reimburses the landlord for expenditures incurred for the
7 mobile home space, including back rent and utilities and all
8 costs incurred because of the tenant's abandonment, including
9 attorneys' fees, removal and storage costs.

10 Section 5 amends section 562B.27 by providing that a mobile
11 home owner or lienholder who transfers or releases an interest
12 in the mobile home after the landlord has sent notice of
13 abandonment can no longer avoid the liability imposed for
14 abandonment.

15 Section 6 makes the existing procedure to dispose of a
16 mobile home to enforce a landlord's rights permissive. Other
17 sections permit a new alternate procedure in the form of a
18 small claims action regardless of the actual dollar value of
19 the mobile home, so long as any monetary claim associated with
20 the action is less than or equal to two thousand dollars.

21 Sections 7 and 8 amend section 562B.32 to substantially
22 circumscribe situations in which the existing presumption of
23 retaliatory conduct arises to shift the burden of proof to the
24 landlord. Section 7 bars a landlord from retaliating against
25 a tenant if the tenant has complained to the landlord of a
26 violation which actually existed at the time of the tenant's
27 complaint. This is a change from existing law which makes no
28 distinction between a valid complaint and an invalid complaint
29 or whether the violation complained of was corrected prior to
30 the retaliatory action. Section 8 provides that the
31 presumption of retaliatory conduct does not arise if the
32 landlord can show one or more nonretaliatory reasons for the
33 landlord's actions. Section 8 further reverses the burden of
34 proof when the presumption does not arise by prohibiting a
35 finding of retaliation unless it is found that the landlord's

1 actions would not have occurred but for a retaliatory motive.
2 The current burden of proof in cases in which the presumption
3 does not arise is proof by a preponderance of the evidence;
4 that is, the mobile home park tenant need only show it is more
5 likely than not that retaliation occurred.

6 Section 9 amends section 562C.4 to permit service of notice
7 for abandonment of a mobile home by a single published notice
8 under rule of civil procedure 60.

9 Sections 10, 11, and 12 amend chapter 631 to grant
10 concurrent jurisdiction to the district court sitting in small
11 claims over an action for abandonment of a mobile home or
12 personal property pursuant to section 562C.3, if no money
13 judgment in excess of two thousand dollars is sought, but
14 regardless of the actual market value of the mobile home or
15 property at issue. Sections 11 and 12 provide that service,
16 appearance, and default requirements for a small claims action
17 for abandonment of a mobile home or personal property are to
18 be treated similarly to forcible entry and detainer actions.

19 Section 13 amends section 648.19 governing joinders or
20 counterclaims by treating a small claims action for
21 abandonment of a mobile home the same as an action to collect
22 back rent under the Mobile Home Parks Residential Landlord and
23 Tenant Act by denying joinder or counterclaim in small claims
24 abandonment cases.

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SENATE FILE 292

S-3255

1 Amend Senate File 292 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 562B.25, Code 1989, is amended
5 by striking the section and inserting in lieu thereof
6 the following:

7 562B.25 NONCOMPLIANCE WITH RENTAL AGREEMENT BY
8 TENANT --TERMINATION FOR GOOD CAUSE ONLY.

9 1. TERMINATION OR DENIAL OF RENEWAL "FOR GOOD
10 CAUSE" ONLY. A tenancy shall not be terminated or
11 renewal of a tenancy refused except for good cause and
12 upon giving of a written notice to the tenant to
13 remove a mobile home from the mobile home park upon a
14 date not less than ninety days after receipt of the
15 notice except a thirty-day notice of termination is
16 permitted for repetitive violations pursuant to
17 subsection 3, paragraph "a". The period for removal
18 and the cause for termination or denial of renewal
19 shall be specified in the notice. To terminate or
20 refuse to renew a tenancy, the landlord shall deliver
21 a written notice to the tenant specifying the acts and
22 omissions constituting the breach, or otherwise
23 describing the "good cause" claimed, and that the
24 rental agreement will terminate upon a date not less
25 than ninety days after receipt of the notice if the
26 breach is not remedied within a reasonable time. A
27 notice of termination shall not be enforced until ten
28 days after a mediation agreement or arbitrator's order
29 providing for termination is entered pursuant to
30 section 562B.36.

31 2. "GOOD CAUSE" DEFINED. For purposes of this
32 section, "good cause" means one or more of the
33 following:

34 a. Failure of a tenant to comply with a local
35 ordinance or state law relating to mobile homes after
36 the tenant has received notice of noncompliance from
37 the appropriate government agency.

38 b. Material breach by the tenant of a reasonable
39 rule of the park as contained in the written lease or
40 other material breach of the rental agreement.

41 c. Conduct by the tenant, upon the park premises,
42 which constitutes a substantial annoyance to other
43 tenants.

44 d. Nonpayment of rent, utility charges, or
45 reasonable incidental service charges, if the amount
46 due has been unpaid for a period of at least five days
47 from its due date, provided that the tenant shall be
48 given a thirty-day written notice subsequent to that
49 five-day period to pay the amount due or to vacate the
50 tenancy. The notice may be given at the same time as

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1 the ninety-day notice required for termination of the
2 tenancy. Payment by the tenant prior to the
3 expiration of the thirty-day notice period shall cure
4 a default under this paragraph and shall cancel the
5 related ninety-day notice of termination.

6 However, if a tenant has been given a thirty-day
7 notice to pay the amount due or to vacate the tenancy
8 on three or more occasions within the preceding
9 twelve-month period, no written thirty-day notice
10 shall be required for a subsequent nonpayment of rent,
11 utility charges, or reasonable incidental service
12 charges, and the ninety-day notice of termination
13 creates no right to cure. A prior mediation agreement
14 or arbitration finding of good cause for nonpayment of
15 rent is not required to support issuance of a notice
16 of termination with no right to cure pursuant to this
17 unnumbered paragraph.

18 The tenant shall remain liable for all charges
19 accruing up until the time the mobile home is removed.

20 Cure of a default of rent, utility charges, or
21 reasonable incidental service charges by the owner or
22 any junior lien holder, if other than the tenant,
23 shall not be exercised more than twice during a
24 twelve-month period.

25 e. Material noncompliance of the tenant with
26 section 562B.18.

27 f. Condemnation of the tenant's lot by the
28 exercise of eminent domain or by order of state or
29 local government agencies.

30 g. Change of use by the mobile home park owner
31 pursuant to section 562B.35. For a change in use, the
32 procedure required by section 562B.35 shall be
33 followed in place of the procedure in this section.

34 3. RIGHT TO CURE. The tenant may avoid
35 termination or denial of renewal by correcting the
36 violation or noncompliance within thirty days of
37 receiving the ninety-day notice to terminate. If the
38 breach is remediable by repair or the payment of
39 damages or otherwise, and the tenant adequately
40 remedies the breach prior to the expiration of thirty
41 days, the rental agreement shall not be terminated at
42 the expiration of ninety days. The ninety-day notice
43 to terminate shall be accompanied by a thirty-day
44 notice to vacate explaining the right to cure and
45 detailing the required remedy. If no cure is
46 attempted or if the landlord does not accept an
47 attempted cure, the landlord may file a mediation
48 petition pursuant to section 562B.36 within ten days
49 after the expiration of the thirty-day cure period.

50 a. However, if at least two mediation agreements

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1 or arbitrator's findings have been entered within the
2 immediately preceding twelve-month period against the
3 tenant for the same good cause violation, except
4 nonpayment of rent, as alleged by the landlord, a
5 thirty-day written notice of termination shall be
6 effective and no right to cure is available and no
7 thirty-day notice to vacate is required. A mediation
8 petition may be filed at the same time, or at any time
9 after, the landlord's delivery of the notice of
10 termination under this paragraph.

11 b. Nothing in this section relieves the park owner
12 from the obligation to demonstrate that a rule is
13 reasonable and has in fact been violated.

14 If rent is due and unpaid and the tenant fails to
15 pay the rent within the thirty-day period to cure, the
16 landlord may terminate the rental agreement upon the
17 expiration of the ninety-day termination notice
18 period. The thirty-day notice to vacate and the
19 ninety-day notice of termination may be filed at the
20 same time.

21 4. Except as otherwise provided in this chapter,
22 the landlord may recover damages, obtain injunctive
23 relief, or recover possession of the mobile home space
24 pursuant to an action in forcible detainer for good
25 cause.

26 5. The remedy provided in subsection 4 of this
27 section is in addition to any right of the landlord
arising under subsection 1 of this section.

28 Sec. 2. NEW SECTION. 562B.33 MOBILE HOME PARK
29 RULES.

30 1. DEPARTMENTAL RULES ON MINIMUM STANDARDS. The
31 department of inspections and appeals shall adopt
32 minimum mobile home park standards by rule to assure
33 compliance with the requirements of this chapter; to
34 assure compliance with health and safety requirements
35 imposed by federal, state, and local authorities; to
36 protect the peaceful enjoyment of a mobile home owner
37 or resident in the owner's or resident's home in the
38 mobile home park; and to prevent fraud or abuse and
39 guarantee the legal rights of a mobile home owner or
40 resident. The department may, by rule, require
41 licensing of mobile home parks and may impose fees to
42 be paid by a mobile home park. A fee for inspection
43 or licensing shall be based upon the administrative
44 expenses of sustaining the department's and local
45 inspection authority's costs of operating the
46 inspection and enforcement program required by this
47 section, which costs shall include, but are not
48 limited to, the costs for the following:

49 a. Administrative and clerical staff.

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1 b. Office facilities, supplies, and equipment.
2 c. Travel expenses incurred by department staff
3 and local officials in the course of the inspection
4 and enforcement program.

5 d. Independent tests or investigations.

6 2. LICENSING AND INSPECTION FEES. The revenues
7 from fees shall be allocated as follows:

8 a. Ten percent to the department of inspections
9 and appeals.

10 b. Ninety percent of revenues collected within a
11 local jurisdiction responsible for enforcement to the
12 local jurisdiction.

13 3. PENALTIES FOR LAX ENFORCEMENT. If the
14 department finds that a local jurisdiction has not
15 adequately enforced this chapter or the rules adopted
16 pursuant to this section, the responsible jurisdiction
17 shall forfeit all revenue from licensing or inspection
18 fees until a proposed compliance program is accepted
19 by the department. Failure to receive revenues does
20 not relieve a local jurisdiction of its obligation to
21 enforce this chapter or rules adopted pursuant to this
22 section. Failure to file a proposed compliance
23 program within a reasonable period of time after
24 receiving notice from the department of inadequate
25 enforcement is grounds for the director of the
26 department to impose a compliance program and to fine
27 the local jurisdiction.

28 Sec. 3. NEW SECTION. 562B.34 ENFORCEMENT
29 AUTHORITY.

30 1. CITY LARGER THAN TEN THOUSAND. A city with a
31 population greater than ten thousand is responsible
32 for enforcing the minimum mobile home park rules
33 adopted by the department under section 562B.33 and
34 this chapter.

35 2. COUNTY. A county is responsible for enforcing
36 the minimum mobile home park rules adopted by the
37 department under section 562B.33 and this chapter for
38 a mobile home park within the county and outside a
39 city with a population greater than ten thousand.

40 3. FEES. The responsible local jurisdiction shall
41 receive funding for enforcement authorities pursuant
42 to section 562B.33, but if revenue from licensing and
43 inspection fees is restricted due to noncompliance,
44 the local jurisdiction remains legally and financially
45 responsible for enforcement.

46 Sec. 4. NEW SECTION. 562B.35 CHANGE OF USE BY
47 THE MOBILE HOME PARK OWNER -- EFFECTIVE PRIVATE
48 CONDEMNATION.

49 An owner may change the use of a mobile home park
50 to another use and terminate the rental agreement, if

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1 the mobile home park is to be closed and the land
2 converted to a different use, which is not required by
3 the exercise of eminent domain or by order of state or
4 local agencies, if the following conditions are met:

5 a. FIFTEEN DAYS' NOTICE OF INTENT TO CHANGE USE.

6 The management gives both the residents and owners at
7 least fifteen days written notice that the management
8 will be appearing before a local governmental board,
9 commission, or body to request permits for a change of
10 use of the mobile home park.

11 b. ONE HUNDRED EIGHTY DAYS' NOTICE OF TERMINATION
12 OF TENANCY DUE TO CHANGE IN USE. After all required
13 permits requesting a change of use have been approved
14 by the local governmental board, commission, or body,
15 the management gives both the residents and owners
16 ninety days or more written notice of termination of
17 tenancy.

18 If the change of use requires no local governmental
19 permits, the management gives notice twelve months or
20 more prior to the change of use. The management in
21 the notice shall disclose and describe in detail the
22 nature of the change of use.

23 c. REQUIRED NOTICE TO PROPOSED TENANTS OF PENDING
24 CHANGE IN USE. The management gives each prospective
25 tenant written notice of the proposed change in use
26 prior to the inception of the tenancy.

27 d. COMPENSATION FOR DISLOCATION. The owner of a
28 mobile home park shall pay the reasonable costs of
29 moving and relocating a mobile home, subject to a
30 proposed change in use, to another location within a
31 reasonable distance of the park. Reasonable costs of
32 moving include but are not limited to actual
33 transportation charges and expenses to disconnect and
34 reconnect the mobile home to utilities. A reasonable
35 distance includes, at a minimum, the nearest mobile
36 home park accepting mobile homes of the kind being
37 relocated. Reasonable costs shall also include
38 consideration of the reasonable and feasible
39 alternatives available to the tenants. The burden is
40 upon the owner or management to demonstrate that a
41 proposed relocation expense, considered as part of the
42 total relocation expense, is unreasonable.

43 Alternatively, if the landlord finds space
44 acceptable to the tenant to which the tenant can move
45 the mobile home and the landlord pays all the moving
46 and relocating expenses, the tenant may accept this in
47 compensation.

48 A landlord shall not increase the rent for the
49 purpose of offsetting the payments required under this
50 section. An increase in the rent shall not be made

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1 after a notice of termination is given pursuant to
2 this section. Nothing in this section limits a
3 landlord's right to terminate a tenancy for nonpayment
4 of rent or any other cause stated in section 562B.25.

5 Sec. 5. NEW SECTION. 562B.36 MANDATORY

6 MEDIATION.

7 1. MEDIATORS PROVIDED BY DEPARTMENT OF INSPECTIONS
8 AND APPEALS. The department of inspections and
9 appeals shall make available a pool of mediators to
10 mediate mobile home landlord and tenant disputes. The
11 department may contract with an approved dispute
12 resolution center as defined in section 679.1 to
13 provide this service. Except as the provisions of
14 this section conflict, chapter 679 governs the
15 mediation process. The costs of mediation shall be
16 paid equally by the landlord and the opposing party.
17 As used in this section, unless the context otherwise
18 requires, "department" means the department of
19 inspections and appeals or the approved dispute
20 resolution center appointed to conduct the mediation.

21 2. MANDATORY MEDIATION WITHIN THIRTY DAYS. A
22 mobile home park tenant, a mobile home park tenants'
23 union or similar organization, or a mobile home park
24 landlord may file a petition for mediation with the
25 department. The petition shall name the landlord of
26 the mobile home park or the tenant against whom the
27 complaint is made and shall contain a narrative of the
28 facts giving rise to the petition. The petition need
29 not plead specific legal causes of action. Mediation
30 is not required or available for termination for
31 nonpayment of rent pursuant to section 562B.25,
32 subsection 2, paragraph "d". The department may by
33 rule require, or the mediator may in writing request,
34 additional information or documents, if available to
35 the petitioner. The petition shall include a
36 description of the requested relief or remedy. The
37 department shall appoint a mediator. The department
38 shall notify the landlord by restricted mail of the
39 name, address, and phone number of the mediator and a
40 notice of the date, time, and place of the mediation
41 meeting. The department shall notify the tenant by
42 restricted certified mail of the name, address, and
43 phone number of the mediator and the date, time, and
44 place of the mediation meeting. The petition shall be
45 included with the notice to the defendant. The
46 mediation meeting shall be held within thirty days of
47 the notice to the landlord, unless the landlord,
48 petitioner, and mediator mutually agree on a later
49 date. Failure of the landlord to participate in the
50 mediation meeting shall result in the entry of a

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1 default decision in the petitioner's favor, granting
2 the requested relief or remedy. A default decision is
3 enforceable as a contract. Participation of the
4 petitioner in the mediation meeting is a
5 jurisdictional precondition to filing a suit based
6 upon the same facts described in the petition in
7 district court.

8 3. MEDIATION AGREEMENT ENFORCEABLE AS CONTRACT.

9 If an agreement is reached between the parties to
10 mediation, it shall be reduced to writing, signed by
11 all parties and the mediator, and be filed with the
12 department. A mediation agreement is an enforceable
13 contract.

14 4. MANDATORY ARBITRATION WITHIN TEN DAYS OF
15 FAILURE OF MEDIATION. If a mediation agreement is not
16 reached within the thirty days permitted under
17 subsection 2, the mediator becomes an arbitrator. The
18 arbitrator may schedule and require the party's
19 attendance at an arbitration hearing. The arbitration
20 hearing shall be held within ten days of the last
21 mediation meeting unless the petitioner, the landlord,
22 and the arbitrator mutually agree on a later date.

23 The arbitrator shall promptly issue the arbitrator's
24 findings and order after conclusion of the arbitration
25 hearing. The findings, if required by the facts of
26 the case, shall include a determination of the
27 presence of good cause, as defined in section 562B.25.
28 The arbitrator's order shall confirm termination of
29 the contract in support of the notice of termination
30 if required by section 562B.25 and such additional
31 relief as necessary or convenient to maintain or
32 restore the successful party's rights and interest.

33 5. CONSENT TO ARBITRATION PART OF EVERY RENTAL
34 AGREEMENT FOR A MOBILE HOME SPACE. A rental agreement
35 includes as a matter of law an agreement by both
36 parties to submit to arbitration in the event a
37 mediation petition is filed and no default decision or
38 mediation agreement is filed. The department shall
39 appoint the arbitrator, as provided in subsection 2.
40 If a written rental agreement fails to include a
41 consent to arbitration, it is implied by law. Chapter
42 679A shall govern the arbitration proceedings and
43 effect of the arbitration award. Notwithstanding,
44 section 679A.10, the losing party shall pay the costs
45 of arbitration, except for counsel fees, unless the
46 arbitrator finds that such an award of costs would
47 impose an injustice or undue hardship on the losing
48 party.

49 Sec. 6. Section 648.3, Code 1989, is amended to
50 read as follows:

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1 648.3 NOTICE TO QUIT.

2 Before action can be brought in any except the
3 first of the above classes, three days' notice to quit
4 must be given to the defendant in writing. However, a
5 landlord who has given a tenant three days' notice to
6 pay rent and has terminated the tenancy as provided in
7 section 562A.27, subsection 2, ~~or section 562B.25,~~
8 ~~subsection 2, if the tenant is renting the mobile home~~
9 ~~or the land from the landlord~~ may commence the action
10 without giving a three-day notice to quit.

11 A mobile home park landlord who has given a tenant
12 thirty-days' notice to vacate or pay rent and who has
13 terminated the tenancy as provided in section 562B.25
14 or 562B.35, may commence the forcible entry or
15 detainer action against the mobile home tenant without
16 giving a three-day notice to quit."

17 2. Title page, by striking lines 4 through 6, and
18 inserting the following: "landlords by requiring
19 termination of mobile home park tenancies only for
20 good cause, providing for minimum standards,
21 delegating enforcement and regulatory authority, and
22 by providing for mandatory mediation and arbitration
23 of certain mobile home park landlord and tenant
24 disputes."

By AL STURGEON

S-3255 FILED MARCH 13, 1989

COLEMAN, CH.
DOYLE
TAYLOR

SSB 102
JUDICIARY
now

SENATE FILE 292
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to property rights and methods of enforcement by
2 altering the relative rights of tenants and landlords,
3 including, but not limited to, mobile home park tenants and
4 landlords and by granting small claims concurrent jurisdiction
5 over certain mobile home and personal property abandonment
6 actions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 321.47, unnumbered paragraph 1, Code
2 1989, is amended to read as follows:

3 In the event of the transfer of ownership of a vehicle by
4 operation of law as upon inheritance, devise or bequest, order
5 in bankruptcy, insolvency, replevin, foreclosure or execution
6 sale, abandoned vehicle sale, or when the engine of a motor
7 vehicle is replaced by another engine, or a vehicle is sold or
8 transferred to satisfy an artisan's lien as provided in
9 chapter 577, a landlord's lien as provided in chapter 570, or
10 a storage lien as provided in chapter 579, or a judgment in an
11 action for abandonment of a mobile home as provided in chapter
12 562C, or repossession is had upon default in performance of
13 the terms of a security agreement, the county treasurer in the
14 transferee's county of residence, upon the surrender of the
15 prior certificate of title or the manufacturer's or importer's
16 certificate, or when that is not possible, upon presentation
17 of satisfactory proof to the county treasurer of ownership and
18 right of possession to the vehicle and upon payment of a fee
19 of ten dollars and the presentation of an application for
20 registration and certificate of title, may issue to the
21 applicant a registration card for the vehicle and a
22 certificate of title to it. The persons entitled under the
23 laws of descent and distribution of an intestate's property to
24 the possession and ownership of a vehicle owned in whole or in
25 part by a decedent, upon filing an affidavit stating the name
26 and date of death of the decedent, the right to possession and
27 ownership of the persons filing the affidavit, and that there
28 has been no administration of the decedent's estate, which
29 instrument shall also contain an agreement to indemnify
30 creditors of the decedent who would be entitled to levy
31 execution upon the motor vehicle to the extent of the value of
32 the motor vehicle, are entitled upon fulfilling the other
33 requirements of this chapter, to the issuance of a
34 registration card for the interest of the decedent in the
35 vehicle and a certificate of title to it. No requirement of

1 chapter 450 or 451 shall be considered satisfied by the filing
2 of the affidavit provided for in this section. If, from the
3 records in the office of the county treasurer, there appear to
4 be any liens on the vehicle, the certificate of title shall
5 contain a statement of ~~such~~ the liens unless the application
6 is accompanied by proper evidence of their satisfaction or
7 extinction. Evidence of extinction may consist of, but is not
8 limited to, an affidavit of the applicant stating that a
9 security interest was foreclosed as provided in Uniform
10 Commercial Code, chapter 554, Article 9, Part 5.

11 Sec. 2. Section 535.2, Code 1989, is amended by adding the
12 following new subsection:

13 NEW SUBSECTION. 7. This section does not apply to a
14 charge imposed for late payment of rent.

15 Sec. 3. Section 562B.25, Code 1989, is amended by striking
16 the section and inserting in lieu thereof the following:

17 562B.25 NONCOMPLIANCE WITH RENTAL AGREEMENT BY TENANT --
18 FAILURE TO PAY RENT.

19 1. Except as provided in this chapter, if there is a
20 material noncompliance by the tenant with the rental
21 agreement, the landlord may deliver a written notice to the
22 tenant specifying the act or omission constituting the breach
23 and that the rental agreement will terminate upon a date not
24 less than thirty days after receipt of the notice if the
25 breach is not remedied in fourteen days. If there is a
26 noncompliance by the tenant with section 562B.18 materially
27 affecting health and safety, the landlord may deliver a
28 written notice to the tenant specifying the act or omission
29 constituting the breach and that the rental agreement will
30 terminate upon a date not less than thirty days after receipt
31 of the notice if the breach is not remedied in fourteen days.
32 However, if the breach is remediable by repair or the payment
33 of damages or otherwise, and the tenant adequately remedies
34 the breach prior to the date specified in the notice, the
35 rental agreement does not terminate.

1 2. If substantially the same act or omission which
2 constituted a prior noncompliance for which notice was given
3 recurs within six months, the landlord may proceed as follows:

4 a. If the noncompliance by the tenant is with section
5 562B.18, subsection 1,4, or 5, the landlord may terminate the
6 rental agreement if the tenant fails to remedy the breach
7 within three days after written notice by the landlord of the
8 subsequent breach and of the landlord's intention to terminate
9 the rental agreement.

10 b. If the noncompliance by the tenant is with section
11 562B.18, subsection 2 or 3, the landlord may terminate the
12 rental agreement if the tenant fails to remedy the breach
13 within three days after written notice by the landlord of the
14 subsequent breach and of the landlord's intention to terminate
15 the rental agreement if the breach is not remedied within that
16 period of time.

17 c. The landlord may terminate the rental agreement or
18 pursue other remedies as provided in this chapter or the
19 rental agreement.

20 Sec. 4. Section 562B.27, subsection 1, Code 1989, is
21 amended to read as follows:

22 1. A tenant is considered to have abandoned a mobile home
23 when the tenant has been absent from the mobile home without
24 reasonable explanation for thirty days or more during which
25 time there is a default of rent three days after rent is due,
26 or the rental agreement is terminated pursuant to section
27 562B.25. A tenant's return to the mobile home does not change
28 its status as abandoned unless the tenant pays to the landlord
29 all costs incurred for the mobile home space, including costs
30 of removal, storage, notice, attorneys' fees, and all rent and
31 utilities due and owing.

32 Sec. 5. Section 562B.27, subsection 2, paragraph a, Code
33 1989, is amended to read as follows:

34 a. ~~if-a-tenant-abandons-a-mobile-home-on-a-mobile-home~~
35 space; the The landlord shall notify the mobile home owner or

1 other claimant of the mobile home and communicate to that
2 person that the person is liable for any costs incurred for
3 the mobile home space, including rent and utilities due and
4 owing. However, the person is only liable for costs incurred
5 up to ninety days before the landlord's communication. After
6 the landlord's communication, costs for which liability is
7 incurred ~~shall then~~ become the responsibility of the mobile
8 home owner or other claimant of the mobile home. The mobile
9 home owner or lienholder cannot avoid the liability imposed by
10 this section by conveying or releasing the interest in the
11 mobile home after notification of abandonment is given by the
12 landlord. The mobile home shall not be removed from the
13 mobile home space without a signed written agreement from the
14 landlord showing clearance for removal, and that all debts are
15 paid in full, or an agreement reached with the mobile home
16 owner or other claimant and the landlord. For the purposes of
17 this section, "claimant" includes all lienholders on the
18 mobile home.

19 Sec. 6. Section 562B.27, subsection 2, paragraph b, Code
20 1989, is amended to read as follows:

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

24 Sec. 7. Section 562B.32, subsection 1, paragraph b, Code
25 1989, is amended to read as follows:

26 b. The tenant has complained to the landlord of a
27 violation under section 562B.16 which actually existed at the
28 time of the tenant's complaint.

29 Sec. 8. Section 562B.32, subsection 2, Code 1989, is
30 amended to read as follows:

31 2. If the landlord acts in violation of subsection 1 of
32 this section, the tenant is entitled to the remedies provided
33 in section 562B.24 and has a defense in an action for
34 possession. In an action by or against the tenant, evidence
35 of a valid complaint referred to in subsection 1, paragraph

1 "a" or "b", within six months prior to the alleged act of
2 retaliation creates a presumption that the landlord's conduct
3 was in retaliation. The presumption does not arise if the
4 tenant made the complaint after notice of termination of the
5 rental agreement, nor does the presumption arise if the
6 landlord can show one or more nonretaliatory reasons for the
7 landlord's actions. For the purpose of this subsection,
8 "presumption" means that the trier of fact must find the
9 existence of the fact presumed unless and until evidence is
10 introduced which would support a finding of its nonexistence.
11 In cases where the presumption does not arise, the burden of
12 proof remains on the tenant and retaliation shall not be found
13 unless it is found that the landlord's actions would not have
14 occurred but for a retaliatory motive.

15 Sec. 9. Section 562C.4, Code 1989, is amended to read as
16 follows:

17 562C.4 NOTICE.

18 1. Personal service pursuant to rule of civil procedure
19 ~~56~~ 56 shall be made upon the mobile home owner not less than
20 ten days before the hearing. If personal service cannot be
21 completed in time to give the mobile home owner the minimum
22 notice required by this section, the court may set a new
23 hearing date.

24 2. If personal service cannot be made on the mobile home
25 owner because the mobile home owner is avoiding service or
26 cannot be found, service may be made ~~by mailing a copy of the~~
27 ~~petition and notice of hearing to the mobile home owner's last~~
28 ~~known address and publishing the notice in one newspaper of~~
29 ~~general circulation in the county where the petition is filed.~~
30 ~~If the mobile home owner's address is not known to the real~~
31 ~~property owner, service may be made pursuant to rule of civil~~
32 ~~procedure 62 as provided in rule of civil procedure 60 except~~
33 ~~that publication of original notice need be published only~~
34 ~~once and service is complete seven days after the initial~~
35 publication. The court shall set a new hearing date if

1 necessary to allow the ten-day minimum notice required under
2 subsection 1 of this section.

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

15 Sec. 10. Section 631.1, Code 1989, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 4. The district court sitting in small
18 claims has concurrent jurisdiction of an action for
19 abandonment of a mobile home or personal property pursuant to
20 section 562C.3, if no money judgment in excess of two thousand
21 dollars is sought. When commenced under this chapter, the
22 action is a small claim for the purposes of this chapter.

23 Sec. 11. Section 631.4, Code 1989, is amended by adding
24 the following new subsection:

25 NEW SUBSECTION. 3. Actions for abandonment of mobile
26 homes or personal property pursuant to chapter 562C.

27 a. In an action for abandonment of a mobile home or
28 personal property, the clerk shall set a date, time, and place
29 for hearing, and shall cause service to be made as provided in
30 this subsection.

31 b. Original notice shall be served personally on each
32 defendant as provided in rule 56 or rule 60 of the rules of
33 civil procedure. The service shall be made at least ten days
34 prior to the date set for hearing. Upon receipt of the
35 prescribed costs, the clerk shall cause the original notice to

1 be delivered to a peace officer or other person for service
2 upon each defendant.

3 Sec. 12. Section 631.5, unnumbered paragraph 1, Code 1989,
4 is amended to read as follows:

5 This section ~~shall apply~~ applies to all small claims except
6 actions for forcible entry or detention of real property and
7 actions for abandonment of mobile homes or personal property,
8 or both, pursuant to chapter 562C.

9 Sec. 13. Section 648.19, Code 1989, is amended to read as
10 follows:

11 648.19 NO JOINDER OR COUNTERCLAIM -- EXCEPTION.

12 An action of this kind shall not be brought in connection
13 with any other action, with the exception of a claim for rent
14 or recovery as provided in sections section 562A.24, 562A.32,
15 562B.22, 562B.25, or 562B.27, or 562C.3, nor shall it be made
16 the subject of counterclaim. When joined with an action for
17 rent or recovery as provided in section 562A.24, 562A.32,
18 562B.22, 562B.25, 562B.27, or 562C.3, notice of hearing as
19 provided in section 648.5 is sufficient.

20 EXPLANATION

21 This bill increases the procedural options available to
22 mobile home park landlords and alters the relative rights of
23 mobile home park tenants and landlords.

24 Section 1 amends section 321.47 to permit the transfer of
25 title by operation of law for a mobile home adjudged abandoned
26 in the same manner as a landlord's lien is enforced.

27 Section 2 provides that a charge for late payment of rent
28 is not subject to the restrictions on the permissible rates of
29 interest contained in Code section 535.2, the state usury law.
30 This provision includes rent from other persons than just
31 mobile home park tenants, and applies to tenants of all kinds
32 of property.

33 Section 3 provides a new option for a mobile home park
34 landlord to terminate a mobile home space rental agreement
35 with shorter notice and termination periods when the tenant

1 repeats a material noncompliance with the rental agreement.

2 Section 4 amends section 562B.27 to provide that once a
3 tenant has abandoned a mobile home, the landlord may continue
4 to consider the mobile home to be abandoned even though the
5 tenant returns to the mobile home, unless and until the tenant
6 reimburses the landlord for expenditures incurred for the
7 mobile home space, including back rent and utilities and all
8 costs incurred because of the tenant's abandonment, including
9 attorneys' fees, removal and storage costs.

10 Section 5 amends section 562B.27 by providing that a mobile
11 home owner or lienholder who transfers or releases an interest
12 in the mobile home after the landlord has sent notice of
13 abandonment can no longer avoid the liability imposed for
14 abandonment.

15 Section 6 makes the existing procedure to dispose of a
16 mobile home to enforce a landlord's rights permissive. Other
17 sections permit a new alternate procedure in the form of a
18 small claims action regardless of the actual dollar value of
19 the mobile home, so long as any monetary claim associated with
20 the action is less than or equal to two thousand dollars.

21 Sections 7 and 8 amend section 562B.32 to substantially
22 circumscribe situations in which the existing presumption of
23 retaliatory conduct arises to shift the burden of proof to the
24 landlord. Section 7 bars a landlord from retaliating against
25 a tenant if the tenant has complained to the landlord of a
26 violation which actually existed at the time of the tenant's
27 complaint. This is a change from existing law which makes no
28 distinction between a valid complaint and an invalid complaint
29 or whether the violation complained of was corrected prior to
30 the retaliatory action. Section 8 provides that the
31 presumption of retaliatory conduct does not arise if the
32 landlord can show one or more nonretaliatory reasons for the
33 landlord's actions. Section 8 further reverses the burden of
34 proof when the presumption does not arise by prohibiting a
35 finding of retaliation unless it is found that the landlord's

1 actions would not have occurred but for a retaliatory motive.
2 The current burden of proof in cases in which the presumption
3 does not arise is proof by a preponderance of the evidence;
4 that is, the mobile home park tenant need only show it is more
5 likely than not that retaliation occurred.

6 Section 9 amends section 562C.4 to permit service of notice
7 for abandonment of a mobile home by a single published notice
8 under rule of civil procedure 60.

9 Sections 10, 11, and 12 amend chapter 631 to grant
10 concurrent jurisdiction to the district court sitting in small
11 claims over an action for abandonment of a mobile home or
12 personal property pursuant to section 562C.3, if no money
13 judgment in excess of two thousand dollars is sought, but
14 regardless of the actual market value of the mobile home or
15 property at issue. Sections 11 and 12 provide that service,
16 appearance, and default requirements for a small claims action
17 for abandonment of a mobile home or personal property are to
18 be treated similarly to forcible entry and detainer actions.

19 Section 13 amends section 648.19 governing joinders or
20 counterclaims by treating a small claims action for
21 abandonment of a mobile home the same as an action to collect
22 back rent under the Mobile Home Parks Residential Landlord and
23 Tenant Act by denying joinder or counterclaim in small claims
24 abandonment cases.

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