

Legislative Analysis



EVICCTIONS WHEN DRUGS INVOLVED

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House Bills 5182 and 5197 as enrolled
Public Acts 105 and 106 of 2004
Sponsor: Rep. Jerry O. Kooiman
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (1-26-05)

BRIEF SUMMARY: House Bill 5182 would shorten the time frame for evicting a tenant in situations involving the illegal manufacture, sale, or possession of controlled substances. House Bill 5197 would shorten the notice to quit issued in eviction proceedings from seven days to 24 hours.

FISCAL IMPACT: The bills would have no impact on the state or local units of government.

THE APPARENT PROBLEM:

Current law allows a landlord to initiate summary proceedings to evict a tenant when the tenant remains on the property seven days after the landlord has served the tenant a written notice to quit the premises under a lease clause allowing termination when a tenant, a member of the tenant's household, or another person under the tenant's control has engaged in illegal drug activity on the leased premises. The tenant is not required to leave until the matter is settled in court, which can take up to several more weeks.

Some landlords believe the time period to evict tenants engaging in illegal drug activities needs to be shortened. They cite problems with tenants damaging property in retaliation for the seven-day notice to quit, tenants stealing hardware from leased property, and risks of increased violence often associated with the drug trade, such as physical violence and drive-by shootings. Many landlords believe that if the time frame for drug-related evictions were shortened, property damage could be reduced and community safety increased.

THE CONTENT OF THE BILLS:

House Bill 5182 would amend the Revised Judicature Act to shorten the timeframe to recover possession of premises in situations involving the illegal manufacture, sale, or possession of controlled substances. House Bill 5197 would amend 1846 RS 66 to shorten the notice to quit from seven days to 24 hours in situations involving the illegal manufacture, sale, or possession of controlled substances. The bills have an effective date of September 1, 2004. Specifically, the bills would do the following:

House Bill 5182 would amend Chapter 57 of the Revised Judicature Act (MCL 600.5714 et al.). Under the RJA, a person entitled to premises may recover possession of the

premises by a summary proceeding under certain specified circumstances. One such specified circumstance is when a tenant fails to vacate the premises after service of a written demand for possession for termination of the lease (eviction) because the tenant, tenant's relative, member of the household, or other person unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises. (This applies only if a formal police report has been filed alleging the above.) Currently, the person entitled to the premises can initiate summary proceedings to recover possession seven days after the tenant failed to vacate after receipt of the written notice to quit. The bill would shorten this timeframe to 24 hours.

In addition, an action pertaining to a summary proceeding based on illegal drug use by a tenant or guest would have to be heard at the time of the defendant's appearance or trial date and could not be adjourned beyond that time except for extraordinary reasons. (Currently, a summary proceeding is heard within seven days after the defendant's appearance or trial date and can be adjourned beyond that time upon stipulation of the parties in writing or on the record.)

Further, the act allows a writ of restitution to be issued by a court "forthwith" after the entry of a judgment for possession when conditions specified in the act are pleaded and proved, with notice, to the court's satisfaction. (These conditions include premises ordered vacated under provisions of the Housing Law of Michigan; when forcible entry was made contrary to law; when entry was peaceable but now the possession is unlawfully held by force; when the defendant possessed the premises by trespass; or the tenant is causing a serious and continuing health hazard, or causing damage to the premises, and refuses to give up possession or to repair the premises.) The bill would clarify that the writ of restitution could be issued immediately after the entry of a judgment, and would also include as a specified condition an action regarding the illegal manufacture, delivery, or possession of controlled substances on the premises. (Generally, a writ of restitution cannot be issued until the expiration of ten days after the entry of the judgment for possession.)

House Bill 5197 would amend 1846 RS 66 to allow a landlord to terminate the tenancy by giving the tenant a written 24-hour notice to quit (instead of the current 7-day notice to quit). This would apply to situations where the lease was terminated under a clause in the lease that provided for termination if controlled substances were illegally manufactured, delivered, possessed, or possessed with intent to deliver on the premises, and a formal police report had been filed by the landlord so alleging.

ARGUMENTS:

For:

The bills aim at helping correct a problem landlords face when trying to evict tenants involved in criminal drug activities. Many landlords feel that the current law regarding drug-related evictions slows the process and gives the person notified an opportunity to harass or threaten the lives of nearby tenants (for instance, if the tenant believes that another tenant has informed the landlord or others of the illegal activities). Also, many

landlords cite extensive property damage done by these tenants while the process is played out in court such as damage to walls and floorings, broken windows, even plumbing being torn out.

The bill would expedite the eviction process by shortening the seven-day notice to quit to 24 hours. A landlord could then initiate summary proceedings to evict a tenant accused of drug dealing six days sooner. In addition, the summary proceeding would be heard at the same time of the defendant's court appearance or hearing, instead of being heard seven days later. In short, the bill would not change any rights of a tenant facing eviction for illegal drug activity, it would only shorten the time frame from when the landlord gave the tenant a notice to quit and when the court could order the eviction.

Against:

Some feel that the bills pose a serious threat to the rights of tenants wrongly accused of criminal drug activity. In fact, a vindictive landlord could begin summary proceedings for evicting a person simply by filing a formal police report alleging that the person was involved in drug-related criminal activities. In addition, a person could be issued a notice of eviction by a court before he or she had even been found guilty of the criminal charges. Also, a 24-day notice to quit, along with requiring the summary proceeding to be heard the same day as the tenant's court appearance, will make it difficult if not impossible for a tenant to secure legal representation, and may be too short a time for courts to appoint an attorney for low-income tenants. Even though tenants would retain the right to appeal, tenants wrongly charged would be evicted before their cases were heard on appeal. Since in many instances young children and adults not involved in drug activity could be affected by the wrongdoing of a parent, boyfriend, girlfriend, or sibling, critics believe the bills are too harsh and overly punitive to the innocent.

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