

HOUSE BILL No. 5182

October 16, 2003, Introduced by Reps. Kooiman, Sak, Wenke, Vander Veen, Nofs, DeRossett, Sheen, Pappageorge, Voorhees, Caswell and Stahl and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 5714, 5735, and 5744 (MCL 600.5714, 600.5735, and 600.5744), section 5714 as amended by 1990 PA 310 and section 5735 as amended by 2001 PA 162.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5714. (1) A person entitled to premises may recover
2 possession of the premises by summary proceedings in the
3 following ~~eases~~ **circumstances**:

4 (a) When a person holds over premises ~~—~~ after failing or
5 refusing to pay rent due under the lease or agreement by which
6 the person holds the premises within 7 days from the service of a
7 written demand for possession for nonpayment of the rent due.
8 For the purpose of this subdivision, rent due does not include
9 any accelerated indebtedness by reason of a breach of the lease

1 under which the premises are held.

2 (b) When a person holds over premises for ~~7 days~~ **24 hours**
3 following service of a written demand for possession for
4 termination of the lease pursuant to a clause in the lease
5 providing for termination because a tenant, a member of the
6 tenant's household, or other person under the tenant's control
7 has unlawfully manufactured, delivered, possessed with intent to
8 deliver, or possessed a controlled substance on the leased
9 premises. This subdivision applies only if a formal police
10 report has been filed by the landlord alleging that the person
11 has unlawfully manufactured, delivered, possessed with intent to
12 deliver, or possessed a controlled substance on the leased
13 premises. For purposes of this subdivision, "controlled
14 substance" means a substance or a counterfeit substance
15 classified in schedule 1, 2, or 3 pursuant to sections ~~7211,~~
16 ~~7212, 7213, 7214, 7215, and 7216~~ of Act No. 368 of the Public
17 ~~Acts of 1978, being sections 333.7211, 333.7212, 333.7213,~~
18 ~~333.7214, 333.7215, and 333.7216~~ of the Michigan Compiled Laws
19 **7211 to 7216 of the public health code, 1978 PA 368, MCL 333.7211**
20 **to 333.7216.**

21 (c) When a person holds over premises in 1 or more of the
22 following circumstances:

23 (i) After termination of the lease, pursuant to a power to
24 terminate provided in the lease or implied by law.

25 (ii) After the term for which the premises are demised to the
26 person or to the person under whom he or she holds.

27 (iii) After the termination of the person's estate by a

1 notice to quit as provided by section 34 of ~~chapter 66 of the~~
2 ~~Revised Statutes of 1846, as amended, being section 554.134 of~~
3 ~~the Michigan Compiled Laws 1846 RS 66, MCL 554.134.~~

4 (d) When the person in possession willfully or negligently
5 causes a serious and continuing health hazard to exist on the
6 premises, or causes extensive and continuing physical injury to
7 the premises, which was discovered or should reasonably have been
8 discovered by the party seeking possession not earlier than 90
9 days before the institution of proceedings under this chapter and
10 when the person in possession neglects or refuses for 7 days
11 after service of a demand for possession of the premises to
12 deliver up possession of the premises or to substantially restore
13 or repair the premises.

14 (e) When a person takes possession of premises by means of a
15 forcible entry, holds possession of premises by force after a
16 peaceable entry, or comes into possession of premises by trespass
17 without color of title or other possessory interest.

18 (f) When a person continues in possession of premises sold by
19 virtue of a mortgage or execution, after the time limited by law
20 for redemption of the premises.

21 (g) When a person continues in possession of premises sold
22 and conveyed by a personal representative under license from the
23 probate court or under authority in the will.

24 (2) A tenant or occupant of housing operated by a city,
25 village, township, or other unit of local government, as provided
26 in ~~Act No. 18 of the Public Acts of the Extra Session of 1933,~~
27 ~~as amended, being sections 125.651 to 125.709e of the Michigan~~

1 ~~Compiled Laws~~ 1933 (Ex Sess) PA 18, MCL 125.651 to 125.709c, is
2 not considered to be holding over under subsection (1)(b) or (c)
3 unless the tenancy or agreement has been terminated for just
4 cause, as provided by lawful rules of the local housing
5 commission or by law.

6 (3) A tenant of a mobile home park is not considered to be
7 holding over under subsection (1)(b) or (c) unless the tenancy or
8 lease agreement is terminated for just cause pursuant to
9 chapter 57a.

10 Sec. 5735. (1) The court in which ~~the~~ **a summary**
11 proceeding is commenced shall issue a summons, which may be
12 served on the defendant by any officer or person authorized to
13 serve process of the court. The summons shall command the
14 defendant to appear for trial in accordance with the provisions
15 of subsection (2) unless by local court rule the provisions of
16 subsection (4) have been made applicable.

17 (2) ~~The~~ **A summons issued under this section** shall command
18 the defendant to appear for trial as follows:

19 (a) Within 30 days of the issuance date of the summons in
20 proceedings under section 5726, in which event the summons shall
21 be served not less than 10 days before the date set for trial.

22 (b) Within 10 days of the issuance date of the summons in all
23 other proceedings, in which event the summons shall be served not
24 less than 3 days before the date set for trial.

25 (3) If a summons **issued under this section** is not served
26 within the time provided by subsection (2), additional summons
27 shall be issued at **the** plaintiff's request in the same manner and

1 with the same effect as the original summons.

2 (4) ~~In lieu~~ **Instead** of the provisions of subsection (2),
3 ~~the~~ a court by local rule may provide for the application of
4 this subsection **to summary proceedings commenced in the court**, in
5 which event the summons shall command the defendant to ~~make~~
6 ~~appearance~~ **appear** as follows:

7 (a) Within 10 days after service of the summons upon the
8 defendant ~~—~~ in proceedings under section 5726.

9 (b) Within 5 days after service of the summons upon the
10 defendant in all other proceedings.

11 (5) A summons issued under subsection (4) remains in effect
12 until served or quashed ~~—~~ or until the action is dismissed, but
13 additional summons as needed for service may be issued at any
14 time at **the** plaintiff's request.

15 (6) Except as otherwise provided by court rule, ~~the~~ a
16 **summary** proceeding shall be heard within 7 days after the
17 defendant's appearance or trial date and shall not be adjourned
18 beyond that time other than by stipulation of the parties either
19 in writing or on the record.

20 (7) **An action to which section 5714(1)(b) applies shall be**
21 **heard at the time of the defendant's appearance or trial date and**
22 **shall not be adjourned beyond that time except for extraordinary**
23 **reasons.**

24 Sec. 5744. (1) Subject to the time restrictions of this
25 section, the court entering a judgment for possession **in a**
26 **summary proceeding** shall issue a writ commanding the sheriff, or
27 any other officer authorized to serve the process, to ~~cause~~

1 **restore** the plaintiff to, ~~be restored~~ and put **the plaintiff** in,
2 full possession of the premises.

3 (2) On conditions determined by the court, ~~the~~ **a** writ of
4 restitution ~~may~~ **shall** be issued ~~forthwith upon~~ **immediately**
5 **after** the entry of **a** judgment for possession when any of the
6 following is pleaded and proved, with notice, to the satisfaction
7 of the court:

8 (a) The premises are subject to inspection and certificate of
9 compliance under ~~Act No. 167 of the Public Acts of 1917, as~~
10 ~~amended, being sections 125.401 to 125.543 of the Compiled Laws~~
11 ~~of 1948~~ **the housing law of Michigan, 1917 PA 167, MCL 125.401 to**
12 **125.543**, and the certificate or temporary certificate has not
13 been issued and the premises have been ordered vacated.

14 (b) Forcible entry was made contrary to law.

15 (c) Entry was made peaceably but possession is unlawfully
16 held by force.

17 (d) The defendant came into possession by trespass without
18 color of title or other possessory interest.

19 (e) The tenant, ~~wilfully~~ **willfully** or negligently, is
20 causing a serious and continuing health hazard to exist on the
21 premises or is causing extensive and continuing injury to the
22 premises and is neglecting or refusing either to deliver up
23 possession after demand or to substantially restore or repair the
24 premises.

25 (f) **The action is an action to which section 5714(1)(b)**
26 **applies.**

27 (3) When ~~the~~ **a** judgment for possession is based upon the

1 forfeiture of an executory contract for the purchase of the
2 premises, ~~the~~ a writ of restitution shall not be issued until
3 the expiration of 90 days after the entry of judgment for
4 possession if less than 50% of the purchase price has been paid
5 or until the expiration of 6 months after the entry of judgment
6 for possession if 50% or more of the purchase price has been
7 paid.

8 (4) In all ~~other~~ cases **not controlled by subsection (2) or**
9 **(3)**, ~~the~~ a writ of restitution shall not be issued until the
10 expiration of 10 days after the entry of the judgment for
11 possession.

12 (5) If an appeal is taken or a motion for new trial is filed
13 before the expiration of the period during which ~~the~~ a writ of
14 restitution shall not be issued and if a bond to stay proceedings
15 is filed, the period during which the writ shall not be issued
16 shall be tolled until the disposition of the appeal or motion for
17 new trial is final.

18 (6) When ~~the~~ a judgment for possession is for nonpayment of
19 money due under a tenancy or for nonpayment of ~~moneys~~ **money**
20 required to be paid under or any other material breach of an
21 executory contract for purchase of the premises, the writ of
22 restitution shall not issue if, within the time provided, the
23 amount ~~as~~ stated in the judgment, together with the taxed
24 costs, is paid to the plaintiff and other material breaches of
25 ~~an~~ **the** executory contract for purchase of the premises are
26 cured.

27 (7) Issuance of ~~the~~ a writ of restitution ~~, based on~~

1 **following entry of** a judgment for possession ~~in consequence~~
2 **because** of the forfeiture of an executory contract for the
3 purchase of the premises ~~, shall foreclose~~ **forecloses** any
4 equitable right of redemption ~~which~~ **that** the purchaser ~~might~~
5 ~~have or~~ **has or could** claim in the premises.