

Act No. 105
Public Acts of 2004
Approved by the Governor
May 20, 2004
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May 20, 2004
EFFECTIVE DATE: September 1, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

**Introduced by Reps. Kooiman, Sak, Wenke, Vander Veen, Nofs, DeRossett, Sheen, Pappageorge, Voorhees,
Caswell and Stahl**

ENROLLED HOUSE BILL No. 5182

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," 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:

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

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

(b) When a person holds over premises for 24 hours following service of a written demand for possession for termination of the lease pursuant to a clause in the lease providing for termination because a tenant, a member of the tenant's household, or other person under the tenant's control has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises. This subdivision applies only if a formal police report has been filed by the landlord alleging that the person has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises. For purposes of this subdivision, "controlled substance" means a substance or a counterfeit substance classified in schedule 1, 2, or 3 pursuant to sections 7211 to 7216 of the public health code, 1978 PA 368, MCL 333.7211 to 333.7216.

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

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

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

(iii) After the termination of the person's estate by a notice to quit as provided by section 34 of 1846 RS 66, MCL 554.134.

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

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

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

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

(2) A tenant or occupant of housing operated by a city, village, township, or other unit of local government, as provided in 1933 (Ex Sess) PA 18, MCL 125.651 to 125.709c, is not considered to be holding over under subsection (1)(b) or (c) unless the tenancy or agreement has been terminated for just cause, as provided by lawful rules of the local housing commission or by law.

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

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

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

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

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

(3) If a summons issued under this section is not served within the time provided by subsection (2), additional summons shall be issued at the plaintiff's request in the same manner and with the same effect as the original summons.

(4) Instead of the provisions of subsection (2), a court by local rule may provide for the application of this subsection to summary proceedings commenced in the court, in which event the summons shall command the defendant to appear as follows:

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

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

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

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

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

Sec. 5744. (1) Subject to the time restrictions of this section, the court entering a judgment for possession in a summary proceeding shall issue a writ commanding the sheriff, or any other officer authorized to serve the process, to restore the plaintiff to, and put the plaintiff in, full possession of the premises.

(2) On conditions determined by the court, a writ of restitution may be issued immediately after the entry of a judgment for possession when any of the following is pleaded and proved, with notice, to the satisfaction of the court:

(a) The premises are subject to inspection and certificate of compliance under the housing law of Michigan, 1917 PA 167, MCL 125.401 to 125.543, and the certificate or temporary certificate has not been issued and the premises have been ordered vacated.

(b) Forcible entry was made contrary to law.

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

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

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

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

(3) When a judgment for possession is based upon the forfeiture of an executory contract for the purchase of the premises, a writ of restitution shall not be issued until the expiration of 90 days after the entry of judgment for possession if less than 50% of the purchase price has been paid or until the expiration of 6 months after the entry of judgment for possession if 50% or more of the purchase price has been paid.

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

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

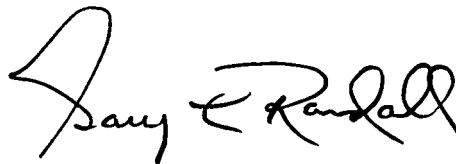
(6) When a judgment for possession is for nonpayment of money due under a tenancy or for nonpayment of money required to be paid under or any other material breach of an executory contract for purchase of the premises, the writ of restitution shall not issue if, within the time provided, the amount stated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

(7) Issuance of a writ of restitution following entry of a judgment for possession because of the forfeiture of an executory contract for the purchase of the premises forecloses any equitable right of redemption that the purchaser has or could claim in the premises.

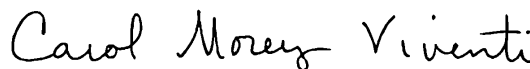
Enacting section 1. This amendatory act does not take effect unless House Bill No. 5197 of the 92nd Legislature is enacted into law.

Enacting section 2. This amendatory act takes effect September 1, 2004.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor